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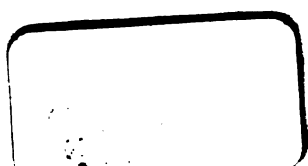


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Concealment as gist of an offense. *Snipe*, 147/285, 93 S. E. 399.

Conduct of persons at trial, exclamations, derisive laughter, etc., error in not using sufficient means to remove prejudicial effect of. *Robinson*, 6 A. 697, 704, 65 S. E. 792.

Consent, when supplied by ratification. *Holsey*, 4 A. 454, 61 S. E. 836.

Of person against whom crime was alleged to have been committed, as affecting criminality. *Edmondson*, 18 A. 233, 236, 89 S. E. 189.

To carnal act, though reluctant. *Yother*, 120/204, 47 S. E. 555.

Consequences actual, not contingent, perpetrator held responsible for. *Lanier*, 106/370, 32 S. E. 335; *Stovall*, 106/444, 32 S. E. 586.

Conspiracy or common design, law as to. *Baynes*, 135/219, 69 S. E. 170; *Reeves*, 135/311, 69 S. E. 536; *Weaver*, 135/317, 69 S. E. 488.

Proof of, by acts and conduct. Charge as to, warranted by evidence. *Davis*, 114/107, 39 S. E. 906.

Abetting, aiding, advising a crime. *Brothers*, 140/617, 79 S. E. 468; *Stevens*, 140/680, 685, 79 S. E. 564, 47 L. R. A. (N. S.) 1009.

By accused with others not named. *Martin*, 115/256, 41 S. E. 576.

Definition of. *Bolton*, 21 A. 184, 94 S. E. 95.

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Responsibility of conspirator for acts of others. *Hill*, 19 A. 334, 91 S. E. 434.

One convicted as conspirator, entitled to new trial with other defendant. *Taylor*, 108/384, 34 S. E. 2.

Responsibility of conspirator as such for acts of others extends only to acts naturally or necessarily done pursuant to or in furtherance of the conspiracy. *Handley*, 115/584, 41 S. E. 992.

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Not alleged in indictment, but charge thereon warranted. *Bradley*, 128/21, 57 S. E. 237; *McLeroy*, 125/240, 54 S. E. 125; *Davis*, 125/299, 54 S. E. 126. May be proved by circumstantial evidence. *McLeroy*, 125/243, 54 S. E. 125; *Owens*, 120/296, 48 S. E. 21; *Dixon*, 116/186, 42 S. E. 357. Charge warranted by evidence. *Somers*, 116/535, 42 S. E. 779; *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426.

Sufficient evidence of. *Patterson*, 124/4, 52 S. E. 77; *Gaines*, 124/5, 52 S. E. 78. Admissibility of acts, conduct, and sayings of. *Rawlins*, 124/32, 52 S. E. 1.

Constitutionality of act under which accusation was framed, not passed on, where the accusation was fatally defective. *Oglesby*, 123/506, 51 S. E. 505.

Of liquor law on which accusation based. *Barker*, 118/35, 44 S. E. 874.

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Construction of penal laws. *Gatlin*, 18 A. 9, 89 S. E. 345; *Kent*, 18 A. 31, 32, 88 S. E. 913.

On demurrer to indictment, defendant bound by. *Mathews*, 125/248, 54 S. E. 192.

To be reasonable. *Coker*, 12 A. 425, 76 S. E. 103, 991; *Jackson*, 12 A. 428, 77 S. E. 371.

Rules for. *Roberts*, 4 A. 207, 210, 215, 60 S. E. 1082; *Moore*, 17 A. 286, 86 S. E. 641; *Weaver*, 17 A. 738, 88 S. E. 414; *Neidlinger*, 17 A. 811, 88 S. E. 687; *Hale*, 21 A. 658, 94 S. E. 823. Provisions void because too indefinite. *Hale*, 21 A. 658, 94 S. E. 823.

Of penal statutes and municipal ordinances, strict. *Schane*, 127/36, 39, 56 S. E. 91; *McCoy*, 124/218, 223, 52 S. E. 434; *Miller*, 124/829, 53 S. E. 335, 4 Ann. Cas. 574; *Barker*, 118/38, 44 S. E. 874.

Should be strict, but not such as to defeat obvious intent of legislature. *Gazaway*, 9 A. 197, 70 S. E. 978.

Strict. Applied to statute as to enticing, persuading, or decoying servant to leave service of his employer. *McAllister*, 122/744, 50 S. E. 921. Meaning of terms not extended; as, public highway or road. *Johnson*, 1 A. 195,

58 S. E. 265. Carrying pistol to public gathering. *Amorous*, 1 A. 813, 57 S. E. 999.

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Strict, of criminal law; rule as to. *Thorn*, 13 A. 12, 78 S. E. 853; *Johnson*, 13 A. 589, 79 S. E. 524; *Calhoun*, 119/314, 46 S. E. 428; *Lipham*, 125/54, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495; *Smith*, 125/111, 53 S. E. 589. Rule discussed; dictionary definition not control, when. *Lipham*, 125/54, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Penal laws construed strictly, but are to have a reasonable intent. *Holland*, 11 A. 771, 76 S. E. 105.

Rule as to; not to be construed so strictly as to defeat obvious legislative intent. *Mohrman*, 105/714, 32 S. E. 143, 43 L. R. A. 398, 70 Am. St. R. 74.

Of verdict of guilty, on indictment with two counts. *Moran*, 125/35, 53 S. E. 806.

Contempt, attachments for, civil and criminal. *Beavers*, 148/506, 97 S. E. 65.

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To be performed in other States, no inalienable right to make. *Arthur*, 146/829, 92 S. E. 637.

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Meaning of "mechanical pursuits," in law as to. *McDonald*, 6 A. 351-2, 64 S. E. 1108.

Interference with convict, not shown. *Thrasher*, 8 A. 391, 393, 69 S. E. 36.

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Custody and labor of convict; unlawful detention beyond term of sentence; reduction of sentence for good conduct; liability of lessee. *Chattahoochee Brick Co.*, 135/529, 69 S. E. 865, 22 Ann. Cas. 263.

Presence of convict in court may be required, when. *Flagg*, 11 A. 38, 74 S. E. 562. Convict serving sentence may be tried for another offense. *Ib.* See catchwords *Habeas corpus*.

Copy of accusation or indictment, right to. *Gordon*, 102/681, 29 S. E. 444.

Of charge against the accused, when not necessary to furnish. *Norris*, 15 A. 511, 83 S. E. 866.

Of charge in municipal court, waiver of, by appearance without demand for services of. *Douglas*, 14 A. 612, 81 S. E. 803.

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Due by county from which venue changed. *Johnston*, 118/312, 45 S. E. 381; 46 S. E. 488.

Of keeping prisoner in jail of another county, liability for. *Talbot County*, 115/766, 42 S. E. 72. Of bringing prisoner to county. *Harris County*, 115/767, 42 S. E. 71.

At common law, were unknown in criminal cases. *Bowles*, 139/116, 76 S. E. 854.

Convicted prisoner, not county, is liable for costs allowed for conducting prisoner before court. *Hall County*, 123/173, 51 S. E. 307.

Insolvent, law as to paying, to sheriff. *Clark*, 137/185, 189, 73 S. E. 15, 16.

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Of abandoned prosecution, judgment for, enforced by execution in name of State, not accused. *Underwood*, 106/268, 32 S. E. 124.

Of prosecution, where grand jury return "no bill and a malicious prosecution," prosecutor liable for, on attachment for contempt. *Green*, 112/52, 37 S. E. 93. See *State*, 112/39, 37 S. E. 174.

Of State's witness, accused not chargeable with, unless the witness was subpoenaed, sworn, and examined. *Herrington*, 115/823, 42 S. E. 222.

Solicitor-general's fees in Supreme Court; one fee for each bill of exceptions though more than one excepting party. What clerk's certificate as to insolvency must show. Fee in riot case. \$15. *In re Kenan*, 109/819, 35 S. E. 312.

Solicitor-general's fee in Supreme Court, where indictment was for felony and conviction of misdemeanor, \$15. *In re Maddox*, 111/647, 36 S. E. 859.

Stenographer's fee for transcript of evidence no part of, in city court of Madison. *Bowles*, 139/115, 75 S. E. 854.

Cotton included in term "farm products," in Penal Code (1910), § 552-3. *Whitaker*, 9 A. 213, 70 S. E. 990.

Act prohibiting transportation of seed-cotton in Harris county between sunset and sunrise, except from where picked to the place of storage on owner's premises, constitutional. *Jenkins*, 119/430, 46 S. E. 629.

Local act prohibiting sale of seed-cotton at certain periods, without consent of owner of land on which grown, a valid exercise of police power, and constitutional. *Bazemore*, 121/619, 49 S. E. 701.

Counsel, constitutional right to benefit of. *Reliford*, 140/778, 79 S. E. 1128.

Privilege and benefit of, what sufficient. *Simmons*, 116/583, 42 S. E. 779.

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Right of accused to presence and representation of. *Roberson*, 135/654, 655, 70 S. E. 175.

Constitutional guaranty of benefit of; one who does not employ counsel must content himself with such counsel as the court may provide. *Walker*, 17 A. 321, 86 S. E. 735.

For prisoner, appointment of, before indictment found. *Charlton*, 106/400, 32 S. E. 347.

Right waived by defendant announcing ready and conducting his defense without counsel and without request that counsel be appointed. *Gatlin*, 17 A. 406, 87 S. E. 151.

Constitutional guaranty of benefit of, requires that reasonable time be given to prepare case. *Nick*, 128/576, 58 S. E. 48.

Appointed counsel, unfamiliar with the case, entitled to time to investigate

and prepare for trial. *McArver*, 114/514, 40 S. E. 779.

Right of accused to say which of his counsel shall be leading counsel. *Chivers*, 5 A. 657, 63 S. E. 703.

Illness of, as ground for new trial. *Flanagan*, 106/109, 32 S. E. 80.

Mental and physical fatigue of, no cause for new trial, where he made no motion or objection on this account. *Tiller*, 110/250, 34 S. E. 204.

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Counterfeit money is not a thing of value. *Foster*, 8 A. 119, 68 S. E. 739.

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County lines changed by creation of new county; effect as to local liquor law. *Moore*, 126/414, 55 S. E. 327; *Parker*, 126/443, 55 S. E. 329.

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Constitutionality of criminal court of Atlanta. *Welborne*, 115/563, 41 S. E. 999.

"Crime," defined. *Jenkins*, 14 A. 276, 80 S. E. 688.

Not specifically defined in code (assault with intent to rape), punishable. *Williams*, 15 A. 306, 82 S. E. 938.

When applied to violation of city ordinance. *Williams*, 11 A. 196, 74 S. E. 1039.

Crop. See catchword "Larceny."

Cross-bill of exceptions in behalf of State, in criminal case, not entertained. *Eaves*, 113/750, 39 S. E. 318.

Deaf accused, right of, to have testimony communicated to him. *Ralph*, 124/81, 52 S. E. 298, 2 L. R. A. (N. S.) 509.

Dealer failing to register business. *Dobbs*, 8 A. 734, 70 S. E. 101.

Death of accused pending writ of error, dismissal. *Taylor*, 137/86, 72 S. E. 898.

Debts, collection of, by criminal process, not countenanced by law. *Jordan*, 143/143, 84 S. E. 549, L. R. A. 1915D, 1122.

De facto officer, doctrine as to, when not applicable. *Herrington*, 103/318, 29 S. E. 931, 68 Am. St. R. 95.

Definition of offense not changed by omission of words from code section. *Hudson*, 104/723, 30 S. E. 947. See *Minter*, 104/744, 30 S. E. 989.

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Act of 1910, as to, constitutional. *Smith*, 14 A. 427, 81 S. E. 361.

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Doing act prohibited by law, not excused by intent thereby to entrap and convict others. *Mitchell*, 20 A. 778, 93 S. E. 709.

Causing one to do criminal act for purpose of detection. *Edmondson*, 18 A. 236, 89 S. E. 189.

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Discharge from custody, after sentence to reformatory, and during confinement in jail, not obtained. *Jackson*, 145/223, 88 S. E. 819.

Nunc pro tunc order for, should be made whenever justice requires it. *Collins*, 7 A. 653, 67 S. E. 847; *Thornton*, 7 A. 754, 67 S. E. 1055.

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"Discretion of judge" defined. *Griffin*, 12 A. 621, 77 S. E. 1080. Should be exercised liberally in favor of accused, in passing on facts. *Ib.* 622.

Dismissal, docket entry of, referred to defendant's appeal, not to the case. *Short*, 138/834, 76 S. E. 359.

Disorder and excitement of populace, as grounds for new trial. No cause for setting aside verdict, after affirmance of judgment overruling motion for new trial. *Frank*, 142/741, 83 S. E. 645, L. R. A. 1915D, 817.

At trial, and applause or cheering without court-room, did not require a new trial. *Hall*, 141/7, 80 S. E. 307; *Frank*, 141/246, 247, 80 S. E. 1016.

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Defined; acts not constituting. *Shepard*, 11 A. 811, 76 S. E. 367.

Erroneous conviction of, on evidence showing State offense, how corrected. *Hicks*, 144/403, 87 S. E. 415.

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Of grand juror or of judge, attack for, when too late. *Shope*, 106/226, 32 S. E. 140.

Lawful acts by disqualified judge (formerly solicitor-general), on motion for new trial. *Allen*, 102/619, 29 S. E. 470.

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By same act, punishable by town and by State. *Aycock*, 104/535, 30 S. E. 815. Liquor sold without license, and in violation of prohibitory law. *Brown*, 104/525, 30 S. E. 837.

Dogs, when not unlawful to kill. *Miller*, 5 A. 463, 63 S. E. 571.

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Impartiality and prejudice, inquiry as to, after evidence and charge completed. **Norton**, 137/843, 74 S. E. 759.

Impartiality assailed after verdict; discretion of judge as trier not disturbed, unless abused. **McNaughton**, 136/600, 71 S. E. 1038; **Jefferson**, 137/382, 73 S. E. 499.

Impartially attacked after verdict, judge's finding on conflicting affidavits upheld. **Hackett**, 108/40, 33 S. E. 842.

Impartiality, discretion of judge to determine as to, not abused. **Carter**, 106/373, 32 S. E. 345, 71 Am. St. R. 262.

Impartiality (on voir dire), no error in excluding questions to test, beyond those in the statute. **Duncan**,

141/4, 80 S. E. 317; **Brown**, 141/6, 80 S. E. 320.

Incompetency, aliunde evidence to show, after he has qualified on voir dire. **Chapman**, 148/531, 97 S. E. 546.

Misconduct of juror and that of bailiff in charge, when did not require new trial. **Jones**, 135/357, 69 S. E. 527.

Partiality, how tested; may be put on voir dire, in misdemeanor case. **Thompson**, 109/272, 34 S. E. 579.

Relationship, refusal to inquire as to, when no ground for reversal. **Carter**, 106/373, 32 S. E. 345, 71 Am. St. R. 262.

Relationship to accused, unknown before verdict, no ground for new trial. **Downing**, 114/30, 39 S. E. 927.

Request of juror that new trial be granted defendant, not proper matter to include in motion for new trial. **Corbitt**, 7 A. 13, 66 S. E. 152.

Stopping and conversing with person on sidewalk while in charge of bailiff, when no such irregularity as to require new trial. **Suple**, 133/601, 66 S. E. 919.

Who found A guilty of buying vote, incompetent to try B for selling the same. **Brown**, 104/736, 30 S. E. 951.
Jurors challenged who sat on preceding case of one jointly indicted with accused. **Wells**, 102/658, 29 S. E. 442.

Administration of oath to panel of six, before examination on voir dire; and postponing of swearing in chief until panel of twelve obtained. **Brown**, 141/6, 80 S. E. 320.

Additional questions on voir dire. **Lindsay**, 138/818, 76 S. E. 369.

Bias and prejudice, as cause for new trial. **Hall**, 141/7, 80 S. E. 307; **Frank**, 141/247, 80 S. E. 1016; **Godbee**, 141/516, 81 S. E. 876; **Allen**, 102/619, 29 S. E. 470.

Challenged for cause, judge determines. He does not, as in challenge to favor, stand in place of common-law triors; and his decision is subject to review on questions of law. **Turner**, 114/421, 40 S. E. 308.

Challenges of. Accused can not have those waived by the State, in addition

to those given to him by law. **Epps**, 2 A. 153, 58 S. E. 381.

Challenge to array because jury commissioner had moved from county; when not good without showing that the fact had been judicially ascertained. **Channell**, 109/150, 34 S. E. 353.

Challenge to array of, not sustained. **Coleman**, 141/731, 82 S. E. 228.

Challenge to array, when proper. Challenge because of feeling of jurors should be to the polls. **Thompson**, 109/272, 34 S. E. 579.

Challenge to, for having served on jury that convicted other person of same offense, in case involving same transaction, when not sustained. **Turner**, 114/421, 40 S. E. 308.

Challenge to poll necessary to raise objection to individual. **Coleman**, 141/731, 82 S. E. 228.

Consideration by, of matter out of evidence, when no cause for new trial. **Levan**, 114/258, 40 S. E. 252.

Evidence on issue of competency, for court as trior. **Perdue**, 135/279, 69 S. E. 184.

In city court of Savannah; authority of judge ex officio to draw jurors. **Cieucevich**, 147/816, 95 S. E. 670.

Misconduct of, requiring new trial. **Smith**, 122/154, 50 S. E. 62. Disqualification of. **Hill**, 122/166, 50 S. E. 57; **Rhodes**, 122/568, 50 S. E. 361; **Phillips**, 122/571, 50 S. E. 361; **Hall**, 141/7, 80 S. E. 307.

On list, had been summoned on former trial and had been stricken by State or accused or disqualified for cause; when no ground of objection in behalf of accused. **Johnson**, 130/22, 60 S. E. 158.

Questions to test fairness and impartiality of. **Allen**, 102/619, 29 S. E. 470; **Wells**, 102/658, 29 S. E. 442.

Set aside for cause who on voir dire state that they are opposed to capital punishment. **Smith**, 90 S. E. 713.

Summoned, in excess of required number, excused. Accused can not demand that particular ones be held for panels. **Ellis**, 114/36, 39 S. E. 881.

Tales, error for judge to direct panel of preceding week placed on panel as. **Bridges**, 103/21, 29 S. E. 859.

Trial of competency. Challenge for cause, after qualifying on voir dire; practice stated. **Polk**, 148/34, 95 S. E. 988.

Jury judges of law and facts, in what sense. **Rouse**, 136/356, 71 S. E. 667; **Pride**, 133/444, 66 S. E. 259; **Berry**, 105/683, 31 S. E. 592; **Goldin**, 104/551, 30 S. E. 749.

Lists, qualifications, etc. **Dickens**, 137/523, 73 S. E. 826.

List of, not furnished to counsel for accused; waiver by not calling attention of court to the omission. **Schumpert**, 9 A. 553, 71 S. E. 879.

Defendant in misdemeanor case, required to exercise first right to strike, in selecting. **Nobles**, 127/213, 56 S. E. 125.

Disqualification of bailiff in charge of, when no ground for reversal. **Patterson**, 122/587, 50 S. E. 489.

Furnished extracts from code by bailiff, though after verdict agreed upon, cause for new trial. **Cooper**, 103/63, 29 S. E. 439, 68 Am. St. R. 77.

Irregularities in conduct of, when not cause new trial. **Robinson**, 109/506, 34 S. E. 1071.

Irregularity in summoning, when not cause new trial. **Dover**, 109/485, 34 S. E. 1030.

Meaning of questions on voir dire inaccurately explained to, when not cause new trial. **Robinson**, 109/506, 34 S. E. 1017.

Not agreeing, discharged in absence of prisoner confined in jail, and without his consent; ground for plea of former jeopardy. **Bagwell**, 129/170, 58 S. E. 650.

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Poll of, is matter of right, if demanded in time. Question must go to each juror, not to jury collectively. **Blankinship**, 112/402, 37 S. E. 732; **Brownlow**, 112/406, 37 S. E. 733.

Put in charge of unsworn bailiff by sheriff, new trial required. **Washington**, 138/370, 75 S. E. 253.

Rulings as to making up, from panels, drawing additional talesmen, special panels, etc., not error. **Cason**, 134/786, 68 S. E. 554.

Separation of some members of, from their fellows, when not cause new trial. **Robinson**, 109/506, 34 S. E. 1071.

Query by, as to examination of bullet, etc., prejudicial error in judge's answer to. **Groce**, 147/672, 95 S. E. 234.

That two of, were grand jurors who found bill, discoverable by due diligence. No new trial granted. **Britt**, 112/583, 37 S. E. 886.

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Panel not to be drawn solely from grand-jury box. **Pollard**, 148/447, 96 S. E. 997.

Twelve disqualified, panel filled by summoning twelve in their stead. **Driver**, 112/229, 37 S. E. 400.

Juvenile court act of 1915 does not deprive superior court of jurisdiction to try one less than 16 years old for burglary. **Hicks**, 20 A. 61, 92 S. E. 558; **Hicks**, 146/706, 92 S. E. 216.

Keeping watch, as means of aiding and abetting crime. **Pirkle**, 11 A. 101, 74 S. E. 709.

Keeping unlawfully. See catchwords, "Disorderly," "Lewd;" **Liquors**.

Knowledge as element of crime. **Jones**, 17 A. 329, 86 S. E. 738.

As element of crime of keeping liquor at place of business. **Sewell**, 11 A. 754, 75 S. E. 1135.

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As element of crime committed through agency of another. **Harker**, 8 A. 94, 68 S. E. 650.

Failure to object, not render club member guilty of sale of liquor by club, when. **Wright**, 14 A. 185, 80 S. E. 544.

Of another's intent to make unlawful use of premises, as affecting guilt of landlord. **Moody**, 14 A. 523, 81 S. E. 588. Error in charging jury as to opportunity to know. *Ib.*

Of falsity of representation by seller, as to soundness, not shown by previous expression of different opinion to him. **Webb**, 12 A. 519, 77 S. E. 670.

Of illegal purpose; circumstances sufficient to put one on notice. **Bashinski**, 123/508, 512, 51 S. E. 499.

Of law, presumption of, discussed, in connection with presumption of innocence. **Hayes**, 13 A. 650, 651, 79 S. E. 761.

Of unlawful purpose of another, how shown. **Kessler**, 126/726, 55 S. E. 963, 8 Ann. Cas. 180.

Of unlawful sale by employee; instruction to jury as to, properly refused, here. **Christian**, 9 A. 61, 70 S. E. 258.

Presumed from ability and opportunity to know. **Rivers**, 118/42, 44 S. E. 859.

Prima facie presumption as to. **Cannon**, 20 A. 175, 92 S. E. 957.

The gist of offense, may be shown regardless of date when acquired. **Bashinski**, 122/164, 50 S. E. 54.

Knucks, metal, carrying concealed; act of 1898 was valid amendment of code section. **Cunningham**, 128/55, 57 S. E. 90.

Laborers. See catchwords, "Emigrant agent," *supra*.

Letter, "personal" solicitation effected by. **Cashin**, 18 A. 87, 89, 88 S. E. 996.

"Liar," when epithet calculated to provoke breach of peace. **Rumsey**, 5 A. 803, 63 S. E. 921.

Liberty of citizen, law is jealous of. **Hill**, 118/23, 44 S. E. 820.

License, as condition of legality of sale. **Singleton**, 14 A. 527, 81 S. E. 596.

Doing business without, not forbidden by ordinance making penal a failure to register. **Thompson**, 127/53, 56 S. E. 114.

One taking orders for, and another delivering, goods from another State, for manufacturer, when subject. **Duncan**, 105/457, 30 S. E. 755.

Tax and registry, omission of, by dealer's employee soliciting trade in other county. **Moore**, 148/457, 97 S. E. 76, 22 A. 797, 97 S. E. 458.

Law not violated by brewing company's agent here. **Smith**, 109/227, 34 S. E. 325. Nor by bicycle-dealer here. **Alexander**, 109/805, 35 S. E. 271.

Municipal ordinance as to, how construed. **Rogers**, 120/193, 47 S. E. 557.

Lien can not be created by one holding title to land, in favor of creditor of another having interest therein, by contract to which he is no party and does not assent. **Atlanta Tr. Co.**, 116/915, 43 S. E. 380.

Limitation as to prosecution for occupying land under forged title does not run during possession, nor within four years after possession abandoned. **Coker**, 115/210, 41 S. E. 684.

As to time of renewing prosecution. **Crawford**, 4 A. 789, 798, 62 S. E. 501.

Charge of court sufficient on what must appear as to time of offense. **Sutton**, 18 A. 107, 88 S. E. 920.

Date within, other than the one alleged, supports conviction. Acquittal or conviction bars trial for same offense as committed within that period. **Cole**, 120/485, 48 S. E. 156.

Exception relied on to prevent bar must be alleged and proved; such proof not admissible without allegation. **Hollingsworth**, 7 A. 16, 65 S. E. 1077.

Not run until prosecutor or one interested in prosecution or injured by the crime knows of it. **Brown**, 6 A. 329, 64 S. E. 1001. Sufficient allegation of want of knowledge. *Ib.* When escape and concealment before indictment arrests bar. **Jones**, 6 A. 803, 65 S. E. 801.

Offense may be proved as committed at any time within the period of. **Reynolds**, 114/265, 40 S. E. 234; **Hancock**, 114/439, 40 S. E. 317.

Of two years; error in not confining consideration of jury to offense within that period, no ground for reversal, under disputed evidence. **Cook**, 13 A. 380, 79 S. E. 87; **Allen**, 8 A. 284, 68 S. E. 1009.

Municipal corporation not barred by lapse of time from prosecuting for offense against it, unless so provided by its ordinance. **Battle**, 118/242, 44 S. E. 994; **Bell**, 126/443, 55 S. E. 230.

No such concealment shown as to arrest bar. **Harris**, 10 A. 366, 73 S. E. 413.

Period of, for prosecution, where offense or offender not unknown or not concealed. **Pitts**, 147/801, 95 S. E. 706.

Accusation filed March 16, 1912, charging commission of misdemeanor March 16, 1910, was not filed "within two years" after the offense. **McLendon**, 14 A. 274, 80 S. E. 692.

Accusations in city courts are within the limitation as to indictments for misdemeanors. **Flint**, 12 A. 169, 76 S. E. 1032.

Allegation in indictment, that the offense was unknown until on or about a date specified, put burden on defendant of showing it was not true. **Mangham**, 11 A. 438, 75 S. E. 512.

Allegation of fact constituting exception to, need not be proved beyond reasonable doubt; only prima facie case required. **Hulsey**, 11 A. 258, 74 S. E. 1099.

Bar not arrested by issuance of warrant. **Flint**, 12 A. 169, 76 S. E. 1032.

Bar not relieved by allegation in indictment here, as to quashed indictment. **Copeland**, 14 A. 109, 80 S. E. 211.

Bar not shown by indictment here; "nineteen hundred and ——" treated as equivalent to an impossible date. **Walker**, 12 A. 96, 76 S. E. 762. Bar not suspended by warrant. **Flint**, 12 A. 169, 76 S. E. 1032.

Burden of proof as to. **Askew**, 3 A. 79, 59 S. E. 311.

Burden on State to prove allegation of fact constituting exception to. **Williams**, 13 A. 338, 79 S. E. 207.

Computation of days and Sundays, Penal Code, § 1, par. 8, not applied to criminal prosecution. **McLendon**, 14 A. 274, 80 S. E. 692. No bar as to murder. **Black**, 14 A. 534, 81 S. E. 588.

Facts constituting exceptions to, need not be minutely alleged; code language sufficient. Only prima facie evidence required. **Cohen**, 2 A. 689, 59 S. E. 4.

Ignorance of crime, sufficient to arrest bar, not shown on part of corporation without showing ignorance of all officers and agents whose knowledge would be imputable to it. **Williams**, 13 A. 338, 79 S. E. 207.

Conviction of manslaughter, under indictment for murder, not barred by limitation applicable to indictments for manslaughter. **Sikes**, 20 A. 80, 92 S. E. 553.

Offense unknown prima facie, if unknown to prosecutor. **Cohen**, 2 A. 689, 59 S. E. 4.

Evidence authorizing jury to find that prosecution was not barred by. **Durrence**, 20 A. 192, 92 S. E. 962.

Offense proved within. **Harris**, 2 A. 407, 58 S. E. 669; **Roberson**, 2 A. 417, 58 S. E. 544; **Cohen**, 2 A. 689, 59 S. E. 4.

Applicable in criminal case is that which relates to the offense charged in the indictment, not that which relates to a minor offense of which the accused might be convicted under the indictment. **Sikes**, 20 A. 80, 92 S. E. 553; **Jinks**, 114/430, 40 S. E. 320.

Sufficient evidence as to absence from State for alleged period. **Hulsey**, 11 A. 258, 74 S. E. 1099. No bar here. **Mangham**, 11 A. 428, 438, 75 S. E. 512.

Testimony of acts conviction for which would be barred by, when admissible. **Taylor**, 110/151, 35 S. E. 161.

See catchword "Time," *infra*.

Lis pendens, doctrine of, not applied to criminal cases. *Taylor*, 110/153, 35 S. E. 161.

List of witnesses need not include any to be introduced except those on whose testimony the grand jury found the presentment. *Echols*, 101/531, 29 S. 531, 29 S. E. 14.

Right of accused to be furnished with; remedy where list is incorrect, not motion to arrest judgment. *Regopoulos*, 115/232, 41 S. E. 619.

"Loan," to himself by one holding money of another in trust. *Mangham*, 11 A. 427, 72 S. E. 512.

Location more particular than allegation of venue, when not necessary. *Hall*, 120/142, 47 S. E. 519.

Mails, as medium of crime. *Rose*, 7 A. 523, 67 S. E. 222.

State may punish for crime committed through, without impinging right of national government to control them. *Rose*, 4 A. 588, 62 S. E. 117.

Malpractice, code section as to, not void because of indefiniteness, or because provision as to jury trial was omitted in codifying statute. Section not construed as meaning that no jury is required. *Kent*, 18 A. 30, 88 S. E. 913.

Service of copy of indictment before laid before grand jury, defendant (county commissioner) entitled to, and to be heard by that body. *Dyer*, 7 A. 58, 65 S. E. 1089.

Accused required to point out records of his office, desired for use in prosecution. *Kent*, 18 A. 30, 88 S. E. 913.

Manufacture of intoxicating liquor. See *Liquors*.

Marriage. See catchword "Adultery."

"Menace," defined. *Rossi*, 7 A. 734, 68 S. E. 56. See *Spence*, 7 A. 833, 68 S. E. 443.

Of violence; constituting breach of peace bond. *Rumsey*, 5 A. 802, 63 S. E. 921.

Merger of misdemeanor into felony, rule as to, abolished. *Sharp*, 7 A. 606, 67 S. E. 1087; *Ayers*, 3 A. 305, 59 S. E. 334.

Minutes silent as to fact which should be entered thereon (return of indictment in open court), irregularity cured by

oral testimony. *Chelsey*, 121/344, 49 S. E. 258.

Misdemeanor case tried as felony, error discovered before sentence, prima facie harmless. *Lewis*, 17 A. 667, 87 S. E. 1087; *Ayers*, 3 A. 305, 59 S. E. 924; *Cabaniss*, 8 A. 129, 68 S. E. 849.

Misrepresentations. See catchword "Cheating."

Mistrial. See *Trials*.

Murder. See catchwords, "Homicide," "Malice," 7 *infra*.

"Moral turpitude," what are offenses involving. *Holloway*, 126/460, 55 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. R. 102, 7 Ann. Cas. 1164.

Motion for new trial, before sentence, not premature. *Eaves*, 113/749, 39 S. E. 318. Not treated as motion to arrest judgment. *Martin*, 115/258, 41 S. E. 576; *Boswell*, 114/41, 39 S. E. 897.

To set aside verdict for irregularity not appearing on record; when proper procedure. *Lyons*, 7 A. 52, 66 S. E. 149.

Motorcycle running at excessive speed; act of 1910 as to automobiles, etc., applies to. *Bonds*, 16 A. 401, 85 S. E. 629.

Moving property to another county (cropper moving part of crop), no violation of law against selling or otherwise disposing of it. *Scott*, 6 A. 332, 64 S. E. 1005.

Municipal and State offenses, in accusation of disorderly conduct; effect of allegation. *Fountain*, 2 A. 713, 58 S. E. 1129.

Corporation without jurisdiction of offense against State law. *Lumpkin*, 12 A. 111, 76 S. E. 1059; *Carter*, 12 A. 430, 78 S. E. 205; *Fichtenberg*, 126/62, 54 S. E. 933. Can punish for violation of ordinance defining different offense. Not hindered by later conviction, on same facts, of violation of State statute. *Shuler*, 126/73, 54 S. E. 965.

Punishment by municipal court of act made penal by State law. *Littlejohn*, 123/427, 51 S. E. 390. Offense punishable by State law, not charged under ordinance here as to

keeping intoxicants for sale. *Little*, 123/503, 51 S. E. 501.

Ordinance against offense punishable under State law, not enforceable. *Mayo*, 146/650, 92 S. E. 59; *Barlow*, 146/805, 923 S. E. 643; *Snipe*, 147/285, 93 S. E. 399; *Lanford*, 147/799, 95 S. E. 688.

Ordinance and State law covering same act. *Campbell*, 6 A. 212, 235-6, 64 S. E. 815; *Athens*, 6 A. 244, 64 S. E. 711; *Lyons*, 6 A. 250, 64 S. E. 713; *Callaway*, 6 A. 354, 64 S. E. 1105; *Cotton* 10 A. 397, 73 S. E. 683; *Dannie*, 10 A. 471, 73 S. E. 684. Punishment under both. *Sutton*, 4 A. 32, 60 S. E. 811.

What essential to constitute municipal offense distinct from crime under State law, from same act. *Snipe*, 147/285, 93 S. E. 399.

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Ordinance, presumption as to; and burden of proof of non-existence or invalidity thereof. *Fountain*, 2 A. 716, 58 S. E. 1129.

Charter denouncement of offense as misdemeanor was not indicated by its title. *Arrington*, 148/115, 95 S. E. 980.

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Without consent of accused, may be entered at any time before the case has been submitted to the jury. *Fortson*, 13 A. 681, 79 S. E. 746. A case is not submitted until after jury has been empaneled and sworn. *Ib.*

Non-residents, validity of laws forbidding certain acts by. *Silver*, 147/162, 92 S. E. 145.

Lis pendens, doctrine of, not applied to criminal cases. *Taylor*, 110/153, 35 S. E. 161.

List of witnesses need not include any to be introduced except those on whose testimony the grand jury found the presentment. *Echols*, 101/531, 29 S. 531, 29 S. E. 14.

Right of accused to be furnished with; remedy where list is incorrect, not motion to arrest judgment. *Regopoulos*, 115/232, 41 S. E. 619.

"Loan," to himself by one holding money of another in trust. *Mangham*, 11 A. 427, 72 S. E. 512.

Location more particular than allegation of venue, when not necessary. *Hall*, 120/142, 47 S. E. 519.

Mails, as medium of crime. *Rose*, 7 A. 523, 67 S. E. 222.

State may punish for crime committed through, without impinging right of national government to control them. *Rose*, 4 A. 588, 62 S. E. 117.

Malpractice, code section as to, not void because of indefiniteness, or because provision as to jury trial was omitted in codifying statute. Section not construed as meaning that no jury is required. *Kent*, 18 A. 30, 88 S. E. 913.

Service of copy of indictment before laid before grand jury, defendant (county commissioner) entitled to, and to be heard by that body. *Dyer*, 7 A. 58, 65 S. E. 1089.

Accused required to point out records of his office, desired for use in prosecution. *Kent*, 18 A. 30, 88 S. E. 913.

Manufacture of intoxicating liquor. See **Liquors**.

Marriage. See catchword "Adultery."

"Menace," defined. *Rossi*, 7 A. 734, 68 S. E. 56. See *Spence*, 7 A. 833, 68 S. E. 443.

Of violence; constituting breach of peace bond. *Rumsey*, 5 A. 802, 63 S. E. 921.

Merger of misdemeanor into felony, rule as to, abolished. *Sharp*, 7 A. 606, 67 S. E. 1087; *Ayers*, 3 A. 305, 59 S. E. 334.

Minutes silent as to fact which should be entered thereon (return of indictment in open court), irregularity cured by

oral testimony. *Chelsey*, 121/344, 49 S. E. 258.

Misdemeanor case tried as felony, error discovered before sentence, prima facie harmless. *Lewis*, 17 A. 667, 87 S. E. 1087; *Ayers*, 3 A. 305, 59 S. E. 924; *Cabaniss*, 8 A. 129, 68 S. E. 849. **Misrepresentations.** See catchword "Cheating."

Mistrial. See **Trials**.

Murder. See catchwords, "Homicide," "Malice," 7 infra.

"Moral turpitude," what are offenses involving. *Holloway*, 126/460, 55 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. R. 102, 7 Ann. Cas. 1164.

Motion for new trial, before sentence, not premature. *Eaves*, 113/749, 39 S. E. 318. Not treated as motion to arrest judgment. *Martin*, 115/258, 41 S. E. 576; *Boswell*, 114/41, 39 S. E. 897.

To set aside verdict for irregularity not appearing on record; when proper procedure. *Lyons*, 7 A. 52, 66 S. E. 149.

Motorcycle running at excessive speed; act of 1910 as to automobiles, etc., applies to. *Bonds*, 16 A. 401, 85 S. E. 629.

Moving property to another county (cropper moving part of crop), no violation of law against selling or otherwise disposing of it. *Scott*, 6 A. 332, 64 S. E. 1005.

Municipal and State offenses, in accusation of disorderly conduct; effect of allegation. *Fountain*, 2 A. 713, 58 S. E. 1129.

Corporation without jurisdiction of offense against State law. *Lumpkin*, 12 A. 111, 76 S. E. 1059; *Carter*, 12 A. 430, 78 S. E. 205; *Fichtenberg*, 126/62, 54 S. E. 933. Can punish for violation of ordinance defining different offense. Not hindered by later conviction, on same facts, of violation of State statute. *Shuler*, 126/73, 54 S. E. 965.

Punishment by municipal court of act made penal by State law: *Littlejohn*, 123/427, 51 S. E. 390. Offense punishable by State law, not charged under ordinance here as to

keeping intoxicants for sale. **Little**, 123/503, 51 S. E. 501.

Ordinance against offense punishable under State law, not enforceable. **Mayo**, 146/650, 92 S. E. 59; **Barlow**, 146/805, 923 S. E. 643; **Snipe**, 147/285, 93 S. E. 399; **Lanford**, 147/799, 95 S. E. 688.

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Officer or deputy entering duties before taking and filing bond and oath of office. *Stephens*, 106/118, 32 S. E. 13.

When statute prohibiting act by "any person" will not be construed as applying to public officers. *Fowler*, 5 A. 36, 42, 62 S. E. 660.

When authorized to arrest and imprison without warrant. *King*, 6 A. 332, 64 S. E. 1001.

Should use reasonable diligence to bring prisoner before judicial officer authorized to commit, etc. *Moses*, 6 A. 251, 64 S. E. 699; *King*, 6 A. 332, 64 S. E. 1001.

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Waiver of, before rendition of verdict. *Cason*, 16 A. 831, 86 S. E. 644.

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Renewal of prosecution after nol. pros. entered; six months' limitation. *Crawford*, 4 A. 789, 797, 62 S. E. 501.

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Renewal of prosecution after nol. pros. entered; six months' limitation. *Crawford*, 4 A. 789, 797, 62 S. E. 501.

Renting to another's tenant or cropper, act of 1901, as to, unconstitutional. *Fortune*, 12 A. 702, 78 S. E. 201.

To another with knowledge of tenant's intention to make illegal use of

- premises. **Moody**, 14 A. 523, 81 S. E. 588.
- Repealed law**, conviction under, no bar to prosecution under existing law, when. **Glover**, 4 A. 455, 61 S. E. 862.
- Prosecution under, after repeal, for prior offense. **Tooke**, 4 A. 495, 61 S. E. 917.
- Representations**. See catchword "Cheating."
- Rescue from arrest** not an offense, when at the time of the arrest requiring warrant the officer's warrant was elsewhere, though the prisoner submitted to custody without resistance. Preventing rearrest on exhibition of warrant was not rescue. **Adams**, 121/163, 48 S. E. 910.
- Resisting officer**. See catchword "Obstructing."
- Reward for apprehension of offender of State law**, no power in municipality to offer or pay. **Barrett**, 145/678, 89 S. E. 781.
- Sale, legality of**, as affected by interstate-commerce law. **Bush**, 10 A. 589, 591, 73 S. E. 1097; **Rose**, 4 A. 588, 62 S. E. 117.
- Meaning of "dealer," in law as to registering brands of fertilizers, etc. **Zipperer**, 7 A. 319, 66 S. E. 806.
- Prosecution allowed to prove as many separate sales as it could, occurring in two years before filing of accusation. **Holmes**, 7 A. 570, 67 S. E. 693.
- Public policy against restrictions on alienation of property, considered in construing penal statute as to. **Jackson**, 5 A. 183, 62 S. E. 726.
- Regulation of, by penal laws, when a valid exercise of police power. **Bazemore**, 121/619, 49 S. E. 701.
- Scienter**, not element of offenses created by prohibition law. **Ware**, 6 A. 578, 65 S. E. 333. When a necessary element of crime. **Robinson**, 6 A. 703, 65 S. E. 792.
- Proof of, when essential. **Waterman**, 114/264, 40 S. E. 262.
- School privilege**, wanton refusal to admit to. **Board of Education**, 101/444, 28 S. E. 896, 41 L. R. A. 593, 65 Am. St. R. 312.
- Seaman**, aiding desertion of ship. Penal Code, § 694, held not in conflict with constitution of U. S. **Handel**, 111/800, 36 S. E. 979, 51 L. R. A. 720.
- Seduction**. Bond on marriage, to stop prosecution. See **Bonds**, catchword "Support."
- Seizure of liquor**, as evidence of unlawful sale; when recoverable from officer. **Padgett**, 6 A. 544, 65 S. E. 352.
- Of liquor in possession of accused seen to make unlawful sale thereof. **Smith**, 3 A. 326, 59 S. E. 934.
- Of liquor, to be used as evidence, lawful. **Jenkins**, 4 A. 864, 62 S. E. 574.
- "Sell or otherwise dispose of;" meaning, in Penal Code. **Scott**, 6 A. 333-4, 64 S. E. 1005; **Gilbert**, 16 A. 249, 85 S. E. 86.
- Service of corporation**, requirement as to, in prosecution against it. **Progress Club**, 12 A. 174, 76 S. E. 1029.
- Of notice of indictment of corporation, waived by voluntary appearance and demurrer. **Southern Ry. Co.**, 125/287, 54 S. E. 160, 114 Am. St. R. 203, 5 Ann. Cas. 411.
- Of sanction of petition for certiorari should be made on solicitor-general; but waiver results by not moving to dismiss in superior court. **Banyon**, 108/849, 33 S. E. 845.
- On solicitor-general, when necessary, in case tried in city court. **Mahaffey**, 15 A. 483, 83 S. E. 795; **Hudson**, 21 A. 506, 507, 94 S. E. 581, 645.
- Servitude** involuntary, contract not illegal as creating. **Potts**, 5 A. 378, 63 S. E. 253.
- Settlement**, as ground for dismissing writ of error. **Kitchens**, 4 A. 440, 61 S. E. 736.
- Of bastardy case, when not illegal. **Jones**, 117/59, 43 S. E. 417.
- Of criminal case, when allowed; not legal consideration for contract. **Deen**, 128/267, 57 S. E. 427.
- Of criminal case. Evidence not showing that consideration of mortgage was. **Kitchens**, 22 A. 40, 95 S. E. 371.

Of criminal case, not legal consideration for promissory note. **McConnell**, 18 A. 52, 88 S. E. 824; **William Hester Co.**, 22 A. 433, 96 S. E. 269.

Of criminal case, when unlawful. **Cromer**, 11 A. 656, 75 S. E. 1056; **Cook**, 11 A. 657, 75 S. E. 1058.

Of criminal prosecution, note given to suppress, void. **McConnell**, 18 A. 52, 88 S. E. 824.

Shooting dog on Sunday, when not unlawful. **Manning**, 6 A. 240, 64 S. E. 710.

One who is madly firing his pistol "all around him" in a crowd of persons may not be felonious. **Phillips**, 131/428, 62 S. E. 239.

Silence, as false representation. **Ricks**, 8 A. 449, 453, 69 S. E. 576.

Soliciting orders for liquor, validity of law as to, as applied to agent of non-resident dealer. **Kirkpatrick**, 12 A. 252, 77 S. E. 104. Agent distributing circular and samples, guilty. *Ib.* "Solicit personally or by agent," meaning of. When applied to circulars, etc., sent by mail. **Rose**, 4 A. 588, 62 S. E. 117. Newspaper advertisement. *Ib.* 608.

Solicitor-general disqualified from advising with grand jury as to true bill for perjury, alleging falsity of testimony adverse to his client in suit for damages, still pending, in which his fee was contingent. Solicitor-general pro tem. should be appointed. Plea in abatement, based on such disqualification, sufficient when. **Nichols**, 17 A. 593, 87 S. E. 817.

Duty of, as to preferring indictment against one bound over for bastardy, and in other cases. **Williamson**, 1 A. 660, 57 S. E. 1079.

Not disqualified because he signed indictment as prosecutor, after signing as solicitor-general. **Pinkney**, 22 A. 105, 95 S. E. 539.

Not entitled to argue case in Court of Appeals, unless admitted to the bar of the court; fee not allowed, though brief filed. **Fallon**, 8 A. 476, 69 S. E. 592.

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Not required to represent State in Supreme Court in case from city court. **Fambrough**, 113/935, 39 S. E. 324.

Question as to disqualification of solicitor, because of signing affidavit on which accusation was based, not properly raised by demurrer. **Tatum**, 22 A. 638, 96 S. E. 1046.

Representation by, and fee, in Court of Appeals in city court case. **Letson**, 7 A. 745, 68 S. E. 60.

Authority to act as, not to be brought in question by accused after conviction. **Davis**, 11 A. 10, 74 S. E. 442.

Impartiality required of. **Nichols**, 17 A. 606, 609, 87 S. E. 817.

Disqualification, mode and time of raising questions as to. **Nichols**, 17 A. 606, 609, 87 S. E. 817; **Stapleton**, 19 A. 36, 90 S. E. 1029. Question here should have been raised before indictment was found. *Ib.*

Service on, in case tried in city court. **Mahaffey**, 15 A. 483, 83 S. E. 795; **Hudson**, 21 A. 506, 507, 94 S. E. 581, 645.

Should represent State in Supreme Court, when error is assigned on refusal to sanction certiorari in case tried in Criminal Court of Atlanta. **Williams**, 121/195, 48 S. E. 938.

Relationship to accused, not invalidate indictment, and no defense to forfeiture of recognizance. **Salter**, 125/761, 54 S. E. 685.

Interest as depositor, or relationship to depositor in bank, not disqualify him in the case of one charged with causing its insolvency. **Stapleton**, 19 A. 36, 90 S. E. 1029; **Spence**, 20 A. 61, 92 S. E. 555.

Who was attorney for railroad company, not disqualified from prosecuting one accused of receiving property stolen from it, under facts here. **Casper**, 22 A. 126, 95 S. E. 534.

Solicitor pro tem., appointed by judge of city court, authorized to sign accusations; fees for services. **Horton**, 11

A. 33, 74 S. E. 559; *Holt*, 11 A. 34, 74 S. E. 560.

Not disqualified to assist in prosecution in superior court, because employed by prosecutor who was defendant in accusation in city court, growing out of same matter. *Willamon*, 17 A. 775, 88 S. E. 702.

Qualification to act as, not properly brought in question by plea in abatement to accusation. *Bush*, 10 A. 544, 73 S. E. 697. Solicitor's removal from county, not vacate office before judicially ascertained. *Ib.*

Ineligibility to act as, when holding other office; question as to, could not be raised by plea in abatement to accusation here. *Christopher*, 21 A. 244, 94 S. E. 72.

Special term called, indictment found thereat and trial held thereunder. *Perry*, 102/365, 30 S. E. 903.

For criminal case; power to call. *Rutland*, 14 A. 748, 749, 82 S. E. 293.

Speed law, violation of, in running motorcycle. *Bonds*, 16 A. 401, 85 S. E. 629.

Statute embracing common-law offenses against public justice. *Ormond*, 120/917, 48 S. E. 383.

Invalidity of, not decided unless question properly raised. *Boswell*, 114/40, 39 S. E. 897. And necessary to decision of the case. *Herring*, 114/97, 39 S. E. 866.

Stenographer's duty as to transcribing notes of testimony. *Rozar*, 138/72, 74 S. E. 792.

Mandamus to compel transcription of stenographer's notes on trial of one indicted for felony, where verdict recommended punishment as for misdemeanor; affirmance by evenly divided court. *Parry*, 119/854, 48 S. E. 29.

Stock in corporation, sale of, without expressing consideration in contract to pay for; effect of act of 1912; public policy against waiver of provisions of the act. *Farmers State Bank*, 15 A. 600, 84 S. E. 89.

Stolen goods. See catchwords, "Possession," "Receiving."

Subpœna for non-resident witness for defendant; ordinary subpœna compels

attendance from any part of the State; countersigning by judge or solicitor-general, not necessary. *Ivey*, 4 A. 828, 62 S. E. 565.

Summons before police court, when sufficient. *Norris*, 15 A. 511, 83 S. E. 866.

Defects in, waived by appearing and pleading. *Hathaway*, 12 A. 648, 77 S. E. 916.

Sunday, city ordinance prohibiting the keeping of "near beer" saloons on, valid. *Campbell*, 6 A. 213, 235, 64 S. E. 815.

Conflict of city ordinance with State law as to; power of city as to. *Peniston*, 117/701, 45 S. E. 65.

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History and purpose of Sunday law. *Ellis*, 5 A. 616, 63 S. E. 588.

Violation of Sunday law, as defense to suit. *Jones*, 13 A. 437, 79 S. E. 357.

Law, as affecting right of employee, injured in violating it, to recover damages from employer. *Hughes*, 136/511, 71 S. E. 728, 36 L. R. A. (N. S.) 547, Ann. Cas. 1912C, 394; 9 A. 510, 71 S. E. 934.

Legality of process issued or served on. *Chafin*, 20 A. 434, 93 S. E. 50.

"Necessity," meaning of, as used in Sunday law. *Hunt*, 19 A. 448, 91 S. E. 879; *Williamson*, 9 A. 443, 446, 71 S. E. 509.

Note not void, where not shown to have been made in prosecution of ordinary business or calling of maker. *Hall*, 18 A. 73, 88 S. E. 918.

Supersedeas, error in refusing to grant, not cause reversal, where harmless. *Strickland*, 115/224, 41 S. E. 713.

In certiorari case. *Johnston*, 7 A. 249, 66 S. E. 554.

Bond, surrender of principal in, by mistake of fact, no reason for remanding him to custody of sureties. *Wiggins*, 112/744, 38 S. E. 86.

Bond in homicide case, judge not required by mandamus to assess. *Fountain*, 148/272, 96 S. E. 337.

Law of, where inadequate to prevent injustice. *White*, 1 A. 569, 57 S. E. 1038.

Tax act of 1900, as to failure of liquor-dealer to register or to pay tax, is declaratory of law as in code, but prescribes different punishment. *Burgamy*, 114/852, 40 S. E. 991.

Legislative sanction by taxation may be withdrawn, and act outlawed. *Anderson*, 2 A. 1, 58 S. E. 401.

Failure to register business and pay tax. *Dobbs*, 8 A. 734, 70 S. E. 101; *Dennard*, 16 A. 135, 84 S. E. 592; *Mott*, 16 A. 190, 84 S. E. 836.

On manufacturers of spirituous liquors, who did not sell them in this State, was not imposed by act of 1898; otherwise by act of 1900. *McNeely*, 114/831, 40 S. E. 996.

Technicalities, opinion as to, in 62 Ga. 731, commended. *Ivey*, 4 A. 831, 62 S. E. 565.

Lack of technicality in criminal pleading, discussed. *Brown*, 8 A. 692, 70 S. E. 40.

Telephone, as medium of criminal communication; venue. *Rose*, 4 A. 598, 62 S. E. 117.

Effect of use of, as medium for sale of liquor between different counties. *Moore*, 126/417, 55 S. E. 327.

Tenant, husband of, who cultivated crop, not liable to prosecution for wrongfully selling it. *Hackney*, 101/512, 28 S. E. 1007.

Of another, renting to or disturbing relation between him and landlord; act of 1901 as to, discussed. *Caldwell*, 117/775, 45 S. E. 41.

Sale of crop by, when unlawful; evidence not authorizing conviction. *Thompson*, 12 A. 201, 76 S. E. 1072.

Term for trial in city court, act as to, construed. *Heywood*, 125/262, 54 S. E. 187.

Test of criminality; lack of good faith and honest endeavor, not of ordinary care. *Brand*, 3 A. 629, 60 S. E. 339.

"Theft," synonymous with "larceny." *Hartford Ins. Co.*, 12 A. 712, 78 S. E. 265.

Threatening letter; construction of statute as to. *Gatlin*, 18 A. 9, 89 S. E. 345.

Not properly identified. *Covington*, 15 A. 513, 83 S. E. 867.

One sending to a wife a letter threatening to make her husband give her a "good buggy-whipping" was guilty of threatening to "wound her." *Gatlin*, 18 A. 9, 89 S. E. 345. Inability to carry out threat, immaterial. *Ib.*

Threats with intent to extort money. *Cook*, 22 A. 770, 772, 97 S. E. 264.

Time to prepare defense. *Moore*, 7 A. 77, 66 S. E. 377. Not sufficient. *Battles*, 9 A. 192, 70 S. E. 973. See *Holland*, 9 A. 853, 72 S. E. 290.

When work under contract for labor was to begin, evidence insufficient as to. *Hurt*, 18 A. 144, 88 S. E. 921.

Time of offense not shown by proof of day and month without year, conviction improper. *Givens*, 105/843, 32 S. E. 341.

Of misdemeanor, any within two years, proved, makes out offense. *Reynolds*, 114/265, 40 S. E. 234.

"During the Christmas holidays," not sufficiently certain that offense was after enactment of law making penal. *Battle*, 118/242, 44 S. E. 994.

Should be alleged in the indictment, but may be proved by circumstantial evidence. *Tipton*, 119/304, 46 S. E. 436.

Month and day alleged need not be proved; proof that it was within period prescribed by statute of limitations is sufficient. *Springer*, 121/155, 48 S. E. 907.

Date in accusation need not be that alleged in warrant. *Shivers*, 123/538, 51 S. E. 596.

Sufficient proof of. *Pitts*, 124/79, 52 S. E. 147.

What must appear as to. *Bell*, 126/445, 55 S. E. 230.

Whether before or after finding of indictment, uncertain; proper instructions to jury. *Levan*, 125/278, 54 S. E. 173.

Proof sufficient as to, giving month and day without year. *Fountain*, 2 A. 717, 58 S. E. 1129.

Proof of commission within two years before indictment. **Newsome**, 2 A. 392, 58 S. E. 672; **Harris**, 2 A. 406, 58 S. E. 669.

Must be proved as committed before indictment or accusation. **Tharpe**, 2 A. 649, 58 S. E. 1070.

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Before accusation or indictment, must appear; burden of proof on State. **Askew**, 3 A. 79, 59 S. E. 311.

Proof not confined to date alleged. **Taylor**, 5 A. 237, 62 S. E. 1048.

Whether before or after indictment, not shown; conviction set aside. **Bragg**, 126/442, 55 S. E. 232; **Lightner**, 126/571, 55 S. E. 477; **Townsend**, 7 A. 811, 68 S. E. 333.

Proof of any time before indictment and within statute of limitations, sufficient, when. **Wheeler**, 4 A. 325, 61 S. E. 409. Date alleged need not be proved. **Cripe**, 4 A. 832, 62 S. E. 567; **Hollingsworth**, 7 A. 18, 65 S. E. 1077; **Johnson**, 7 A. 50, 66 S. E. 148; **Holmes**, 7 A. 570, 67 S. E. 693; **White**, 9 A. 558, 71 S. E. 879.

Not shown to have been before indictment, conviction set aside; this fact not shown by testimony that crime was committed "within the last two years." **Abbott**, 11 A. 43, 74 S. E. 621.

Proof of any time within period of limitation, sufficient; proper charge of court. **Moore**, 11 A. 801, 76 S. E. 159.

Evidence not admissible as to date subsequent to date of affidavit on which accusation was based. **Shealey**, 16 A. 191, 84 S. E. 839.

"Recently," in testimony as to time of offense, held to refer to time within statute of limitations. **Hawkins**, 17 A. 315, 86 S. E. 735.

Statutory bar as to assault with intent to murder, not applied where conviction of that offense was under indictment for murder. **Troup**, 17 A. 387, 87 S. E. 157. No statute of limitations as to prosecution for murder. *Ib.* 387.

Conviction not set aside for failure to prove, unless the point is specifically

made in motion for new trial (since act of 1911). **Wall**, 10 A. 136, 72 S. E. 934; **Gentry**, 15 A. 641, 83 S. E. 1099; **Ford**, 21 A. 499, 94 S. E. 627.

Month mentioned in testimony, without year, understood to be of the current year. **Goldberg**, 22 A. 122, 95 S. E. 541.

Should be alleged in indictment, but may be proved by circumstantial evidence. **Goldberg**, 22 A. 122, 95 S. E. 541.

See catchword, "Limitation."

Title. See catchword, "Larceny."

Transfer of indictments to city and county courts; general law applied; order sufficient; appearance bond construed. **Sampson**, 147/426, 94 S. E. 558.

From superior to city court, how shown. **Coleman**, 4 A. 787, 62 S. E. 487.

To city court, unconstitutional legislation as to. **Williams**, 11 A. 240, 75 S. E. 141.

Of misdemeanor case from superior to county court, discretion as to; order for, can not be granted in vacation. Constitutionality of act providing for transfer. **Dismuke**, 105/589, 31 S. E. 561.

Of misdemeanor cases to city court, for trial, in discretion of judge; not to be made mandatory by special law. **Williams**, 138/168, 74 S. E. 1083.

To courts of new county, power as to, in absence of statutory direction. **Pope**, 124/802, 53 S. E. 384, 110 Am. St. R. 197, 4 Ann. Cas. 551.

Jurisdiction of superior court lost by transferring indictment to city court. **Cook**, 10 A. 580, 73 S. E. 861.

Transportation of seed-cotton between sunset and sunrise, constitutionality of local act prohibiting. **Jenkins**, 119/430, 46 S. E. 629.

Trapping, by causing to commit crime. **Edmondson**, 18 A. 236, 89 S. E. 189.

"True bill" for lower grade of homicide than charged, effect of entry of. **Williams**, 13 A. 83, 78 S. E. 854.

Trust. See catchwords "Larceny after trust."

Turpentine season, provisions of Penal Code as to, looked to in construing contract. *Purdum Co.*, 129/590, 59 S. E. 433.

Uncertainty; statute void in part because too indefinite (act of 1915 as to use of automobiles). *Hale*, 21 A. 658, 94 S. E. 823.

Unconstitutional statute, conviction under, void, though based on plea of guilt. Discharge may be obtained by habeas corpus. *Moore*, 109/62, 35 S. E. 116.

Statute is, in so far as it contains matter not comprehended in title. *Harris*, 110/887, 36 S. E. 232.

"Valuable consideration" for sale of liquor, stolen article (to which no title passes from owner) may be. *Turner*, 18 A. 393, 89 S. E. 538.

Value, fact of, shown by sale of goods stolen, though price not proved. *Greenfield*, 14 A. 603, 81 S. E. 814.

Counterfeit money is not a thing of value. *Foster*, 8 A. 119, 68 S. E. 739.

In larceny cases, not necessarily money value or market value. *Mance*, 5 A. 230; 62 S. E. 1053; *Gates*, 20 A. 171, 92 S. E. 974. Liquor may be of value and the subject of larceny, notwithstanding prohibition law. *Ib.*

Of liquor, where sale is prohibited. *Foster*, 8 A. 123, 68 S. E. 739.

Proof of, essential in larceny. *Joiner*, 124/102, 52 S. E. 151; *Portwood*, 124/783, 53 S. E. 99; *Wright*, 1 A. 158, 57 S. E. 1050.

Not proved, conviction of larceny set aside. *Williams*, 11 A. 766, 76 S. E. 72; *May*, 111/840, 36 S. E. 222; *Lane*, 113/1040, 39 S. E. 463; *Benjamin*, 105/830, 31 S. E. 739.

Of stolen property; no error in charging jury that it was less than \$50, this appearing from uncontradicted evidence. *Strickland*, 12 A. 640, 77 S. E. 1070.

Proof of, when essential. *Ayers*, 3 A. 305, 59 S. E. 924. When sufficient *Ib.*; *Currie*, 3 A. 312, 59 S. E. 926.

No proof of, conviction set aside. *Williams*, 11 A. 766, 76 S. E. 72.

Proof of, when sufficient; it may be V. II—3.

inferred from price paid. *Peterson*, 6 A. 491, 65 S. E. 311.

When indictment for forgery must allege. *Johnson*, 109/268, 34 S. E. 573; *McCombs*, 109/500, 34 S. E. 1023. Judicial cognizance not taken that meat had. *Johnson*, 109/268, 34 S. E. 573.

Vehicle; speed law as to automobiles, etc., applied to a motorcycle. *Bond*, 16 A. 401, 85 S. E. 629.

Void contract, no basis for conviction of one violating it. *Singleton*, 14 A. 527, 532-3, 81 S. E. 596.

Void conviction under indictment charging no offense; remedies, and officer's liability. *McDonald*, 129/243, 58 S. E. 860, 12 Ann. Cas. 701.

Not where accused had day in court, actually or constructively, though not based on evidence. *Davis*, 7 A. 193, 66 S. E. 401.

Voir dire, inaccuracies in explaining to jurors the meaning of questions on, when not cause new trial. *Robinson*, 109/506, 34 S. E. 1017.

Jurors in misdemeanor case may be placed on. *Thompson*, 109/278, 34 S. E. 579.

No right to examine juror on, in misdemeanor case, without first challenging him and assigning cause of challenge. *Cook*, 22 A. 771, 97 S. E. 264.

Objection to questions on, too late after verdict; variance in form, but not in substance, from statutory questions, not cause new trial. *Lindsey*, 111/833, 36 S. E. 62.

What necessary to entitle accused in misdemeanor case to have jury examined on. *Crew*, 113/645, 38 S. E. 941.

Waiver of entry of remitter before entering on term of imprisonment. *Wiggins*, 112/746, 38 S. E. 86.

Warrant, affidavit as basis of. *Mitchell*, 126/84, 54 S. E. 931.

Can not be sworn out by one incompetent as witness against accused, when. *Smith*, 14 A. 614, 81 S. E. 912. Service of, by city policeman, in a

county outside the jurisdiction of the city, not authorized. **Coker**, 14 A. 606, 81 S. E. 818.

Description of offense in, when sufficient. **Pye**, 9 A. 398, 71 S. E. 594.

For search, affidavit for, sufficient. **Page**, 111/75, 83, 36 S. E. 418, 51 L. R. A. 463, 78 Am. St. R. 144.

Issued by officer having authority to issue warrants, admitted in evidence, though not accompanied by an affidavit such as would authorize its issuance. **Hilburn**, 121/344, 49 S. E. 318.

Presumed to have been legally issued, when. **Hilburn**, 121/344, 49 S. E. 318.

When sentence of municipal court operates as. **Williams**, 121/665, 49 S. E. 732.

Of arrest, refusal to execute, or interference with officer attempting to execute, each indictable. **Ormond**, 120/917, 48 S. E. 383.

Not authorize arrest by private citizen in possession of it, when not properly deputized. **Coleman**, 121/594, 49 S. E. 716.

Arrest without, when illegal. **Holmes**, 5 A. 169, 62 S. E. 716.

Arrest without warrant; when authorized, and when not. **Wiggins**, 14 A. 314, 80 S. E. 724. Warrant purporting to be based on affidavit not legal, where no oath was administered. *Ib.* 315.

Arrest and imprisonment without, when proper. **King**, 6 A. 332, 64 S. E. 1001.

See catchword, "Arrest."

Watercourse, obstructing passage of fish in, law prohibiting, construed; exception as to mill-dams did not authorize fall trap in tail-race. **Eaton**, 9 A. 588, 71 S. E. 1004.

Words. See catchword, "Provocation," supra.

Writ of error in behalf of State in criminal case does not lie. **Eaves**, 113/750, 39 S. E. 318.

2. PARTIES.

Accessory may show that principal was innocent, though convicted. **Snow**, 5 A. 608, 63 S. E. 651.

After the fact, allegation of, if nothing further appears, charges a misdemeanor. **Rogers**, 138/750, 75 S. E. 1131.

After the fact defined. **Smiley**, 23 A. 317, 98 S. E. 125.

After fact; sufficiency of indictment. **McKissick**, 11 A. 721, 76 S. E. 71.

After the fact, whether an accomplice needing corroboration. **Springer**, 102/452, 30 S. E. 971.

After the fact is not an accomplice. **Walker**, 118/757, 45 S. E. 608. One may be an accessory who can not be a principal. **Bishop**, 118/799, 45 S. E. 614.

After the fact, no conviction as, of one indicted as principal. **Lanier**, 141/17, 80 S. E. 5.

Before or after fact, not convicted on indictment against him as principal. **Carter**, 106/375, 32 S. E. 345, 71 Am. St. R. 262.

Before the fact, distinguished from principal in second degree. **Maughon**, 9 A. 567, 71 S. E. 922. One can not be convicted as accessory before the fact to voluntary manslaughter. *Ib.*

Before the fact of murder; conviction authorized. **Bivins**, 147/229, 93 S. E. 213.

Before fact of murder; slight evidence corroborating principal; new trial granted. **Bivins**, 144/341, 87 S. E. 285.

Before the fact; indictment sufficient; not necessary to state manner of committing the offense. **Snell**, 13 A. 158, 79 S. E. 71. Evidence insufficient to convict, under indictment charging assault to murder by using instrument to destroy child in womb. *Ib.*

Before the fact, may be charged in same count with principal. Admissibility of proof and what necessary to convict. **Rawlins**, 124/32, 33, 34, 52 S. E. 1.

Before the fact of murder; effect of plea of guilty of principal jointly indicted. **Cantrell**, 141/98, 80 S. E. 649.

Before the fact, to an attempt to commit arson, one may be convicted as. **Howard**, 109/137, 34 S. E. 330.

Participation in felonious design essential. Mere presence and participation in general transaction, when not sufficient. *Fudge*, 148/149, 95 S. E. 980.

Requirement as to conviction of principal before trial of accessory, complied with where one of joint principals was previously convicted. *Braxley*, 17 A. 197, 86 S. E. 425.

Admissions of principal offender, admissible on trial of accessory. *Gullatt*, 14 A. 53, 80 S. E. 340.

To convict, guilt of principal must appear. *Wright*, 1 A. 158, 57 S. E. 1050.

To felony can not be convicted in city court, though the principal may have been convicted of misdemeanor. *Snow*, 5 A. 608, 63 S. E. 651.

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Law as to, not applied where act is made an independent crime by statute. Suborner of perjury is not an accessory. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Indictment against accessory after the fact, defective in not alleging conviction of principal offender, or that he could not be taken, etc. *Roberts*, 18 A. 529, 89 S. E. 1055.

Before the fact and principal, no distinction between, exists in misdemeanor cases. *Slaughter*, 113/286, 38 S. E. 854, 84 Am. St. R. 242.

None in misdemeanors; all participating are principals. *Roberts*, 8 A. 476, 69 S. E. 585; *Christian*, 9 A. 61, 70 S. E. 258; *Morse*, 9 A. 829, 72 S. E. 284; *DeFreese*, 12 A. 201, 76 S. E. 1077; *Hardu*, 10 A. 48, 72 S. E. 513; *Toles*, 10 A. 444, 73 S. E. 597; *Wynne*, 10 A. 818, 74 S. E. 286; *White*, 18 A. 214, 89 S. E. 175; *Jackson*, 16 A. 213, 84 S. E. 974; *Bragg*, 15 A. 631, 84 S. E. 82; *Folsom*, 11 A. 202, 74 S. E. 939; *Butler*, 11 A. 815, 76 S. E. 368.

Applied to dealer's servant. *Moore*, 148/457, 97 S. E. 76; 22 A. 797, 97 S. E. 458.

None in misdemeanors; all who counsel, aid, or abet the offense are principals; indictment may be joint or sev-

eral against all connected with it. *Loeb*, 6 A. 23, 64 S. E. 338; *Southern Express Co.*, 6 A. 31, 64 S. E. 341; *Deal*, 14 A. 124, 80 S. E. 537. See *Moody*, 14 A. 523, 81 S. E. 588; *Beaty*, 7 A. 328, 66 S. E. 808; *Harbuck*, 7 A. 441, 67 S. E. 108; *Stradley*, 7 A. 441, 67 S. E. 107.

Error in not giving the jury instructions limiting the effect of the record of the conviction of the principal, as evidence against accessory. *Thompson*, 16 A. 832, 84 S. E. 591.

In violation of city ordinance, punishable as principal. *Raoul*, 15 A. 212, 82 S. E. 763.

Agent and principal indictable jointly for misdemeanor. *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

See catchwords, "Emigrant," "Indictment," *infra*.

Aiding and abetting defined. *Bexley*, 141/2, 80 S. E. 314. "Aid" or "abet," commission of offense, meaning of. *Loeb*, 6 A. 30, 64 S. E. 338.

Law as to. *Bishop*, 118/802, 45 S. E. 614.

To compound felony. *Hays*, 15 A. 386, 83 S. E. 502. Error in charge as to what would render one guilty as principal in second degree. *Bryant*, 15 A. 535, 83 S. E. 795.

By one not in county where unlawful sale made, but who hired another to sell. *Loeb*, 6 A. 23, 64 S. E. 338. See *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

Facts constituting. *Pirkle*, 11 A. 101, 74 S. E. 709. Not shown by proof of presence and flight. *Butler*, 11 A. 815, 76 S. E. 368.

In manufacture of liquor makes one guilty as principal. *White*, 18 A. 214, 89 S. E. 175.

Language of charge of court as to, too broad, in not being confined to aiding and abetting codefendant. *Brown*, 17 A. 300, 86 S. E. 661.

Larceny; no error in charge of court as to. *Tedder*, 13 A. 630, 631, 79 S. E. 580.

Misdemeanor warrants conviction as a principal offender; verdict finding

guilty of "aiding," etc., was equivalent to general verdict of guilty. *Littlefield*, 22 A. 782, 97 S. E. 258, 259. See *Ward*, 22 A. 786, 97 S. E. 198.

In misdemeanor makes one guilty as principal. *Smith*, 23 A. 140, 98 S. E. 115.

Murder; guilt as principal in second degree. *Lewis*, 136/355, 71 S. E. 417.

Not shown by mere presence. *Harris*, 19 A. 742, 92 S. E. 224.

Proper charge as to. *Goodin*, 126/560, 55 S. E. 503; *Bates*, 18 A. 718. 90 S. E. 481; *Bracewell*, 21 A. 133, 94 S. E. 91.

Robbery. *Hines*, 16 A. 414, 85 S. E. 452.

Escape of convict; evidence warranting conviction. *Anglin*, 14 A. 566, 81 S. E. 804.

Arson, attempt to commit, one may be convicted as accessory before the fact to. *Howard*, 109/137, 34 S. E. 330.

Automobile driven without consent of owner; passenger who cranked the car and told another to drive it, knowing the owner did not consent, was joint principal with driver. *Porter*, 19 A. 449, 91 S. E. 876.

Bigamy, unmarried person may be principal in second degree of. *Bishop*, 118/802, 45 S. E. 614.

Burglary; one indicted as principal in first degree may be convicted on proof that he was principal in second degree. *August*, 11 A. 798, 76 S. E. 164.

Capacity to commit crime, in boy between ten and fourteen years old; evidence sufficient, though meager. *Ware*, 118/752, 45 S. E. 615. See *Rice*, 118/48, 44 S. E. 805, 98 Am. St. R. 99; *Bishop*, 118/799, 45 S. E. 614. Burden of proof as to. *Singleton*, 124/136, 52 S. E. 156.

Child under 14 years of age presumed to be non capax doli; presumption not rebutted, conviction set aside. *Carroll*, 18 A. 203, 89 S. E. 176.

Capacity of, for crime, proper charge to jury as to. *Jackson*, 125/101, 53 S. E. 607.

Responsibility of, for crime. *Brown*, 12 A. 722, 78 S. E. 352.

Under ten years, not criminally responsible. *Canton Mills*, 120/447, 47 S. E. 937.

Classes of persons capable of committing crimes; and others, not of the class, capable of being principals in second degree or accessories. *Bishop*, 118/799, 45 S. E. 614.

Consent (unknown to actor) of person present did not render him guilty as principal. *Bexley*, 141/2, 80 S. E. 314.

Corporation and agent jointly indicted. *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

Legislature may provide for prosecution of, for neglect to perform duties to the public; punishable by fine, not imprisonment. *Southern Ry. Co.*, 125/287, 54 S. E. 160, 114 Am. St. R. 203. 5 Ann. Cas. 411.

Public (operating dispensary for sale of liquors), not subject to penalties of criminal law. *Fowler*, 5 A. 36, 62 S. E. 660.

Responsibility of, for violating criminal law. *Southern Express Co.*, 1 A. 700, 58 S. E. 67.

When punishable for crime of agent or employee. *Rose*, 4 A. 589, 62 S. E. 117.

Custody of goods taken and retained by incapable person is that of owner. *Rice*, 118/49, 44 S. E. 805, 98 Am. St. R. 99.

Degree of offense, determination of. *Bexley*, 141/2, 80 S. E. 314.

Principal in first, and in second, sufficiency of indictment and evidence for conviction of. *Morgan*, 120/294, 48 S. E. 9.

In murder, principals in first and second, need not be distinguished in indictment or verdict. *Jones*, 130/274, 60 S. E. 840.

Principals in first and second (homicide). *Morman*, 133/76, 65 S. E. 146.

Emigrant agent defined; tax law does not apply to one not making the work of such agent his business or occupation. *Chambers*, 23 A. 1, 97 S. E. 274. Inaccurate charge on what constitutes an emigrant agent, not ground for new

trial, under the facts. *McCarty*, 23 A. 80, 97 S. E. 446.

Employer and employee, both principals in misdemeanor (liquor sale). *Christian*, 9 A. 61, 70 S. E. 258; *Morse*, 9 A. 829, 72 S. E. 284.

Husband not criminally liable for wife's acts, when. *Lumpkin*, 9 A. 470, 71 S. E. 755.

Joint defendant acquitted, no ground for new trial. *Maughon*, 9 A. 559, 71 S. E. 922; *Walker*, 17 A. 322, 86 S. E. 735.

Evidence of acts of, when admissible on trial of codefendant, under indictment for forcible detainer. *Lewis*, 105/657, 31 S. E. 576.

Declaration of, as affecting accused on trial. *Bell*, 21 A. 788, 789, 95 S. E. 270.

Charge of court on trial of, not subject to exception that it excluded from consideration the question whether one of them might be guilty and the other innocent. *Harrison*, 20 A. 157, 92 S. E. 970.

Conviction of assault with intent to rape, as to one, legal, though on joint trial the other was convicted of assault and battery. *Moore*, 14 A. 472, 81 S. E. 363.

Error in charge of court using the words, "both or either, or while acting in concert;" cured by subsequent instruction. *Brown*, 17 A. 808, 88 S. E. 691.

Error in failing to charge that though one were found guilty, the other might be acquitted. *Abrams*, 121/170, 48 S. E. 965.

In indictment for murder; instruction on trial of one that if he "alone or with others" killed, etc., he would be guilty. *Cochran*, 113/737, 39 S. E. 337.

Separately tried; no error in charging that the jury were "not concerned with whether or not" the codefendant not on trial was guilty. *Bates*, 18 A. 718, 725, 90 S. E. 481.

State allowed to withdraw election as to which should be tried first. *Dixon*, 12 A. 17, 76 S. E. 793. Each entitled to full number of peremptory chal-

lenges. *Nobles*, 12 A. 355, 77 S. E. 184. Right of separate trial. *Ib.* 356.

Joint enterprise, responsibility of one for acts of others. *Handley*, 115/584, 41 S. E. 992.

Joint indictment not necessary in case of officer of corporation declaring unlawful dividend. *Cabaniss*, 8 A. 129, 68 S. E. 849.

For murder; conviction of each of accused on evidence of presence, aiding and abetting. *Johnson*, 148/547, 97 S. E. 515.

Or several indictments, proper as to actual perpetrator and those who counsel, aid, or abet misdemeanor. *Loeb*, 6 A. 23, 64 S. E. 338; *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

Joint motion for new trial, and joint writ of error, by some of defendants jointly indicted, tried, and convicted, allowed. *Walden*, 9 A. 584, 71 S. E. 945.

Joint trial of persons not jointly indicted, question as to legality of, not properly presented. *Hardison*, 18 A. 692, 90 S. E. 374.

Larceny, absolute perpetrator of, not legally convicted as accessory before the fact, who counseled, commanded, or procured the crime. *Riggins*, 116/592, 42 S. E. 707.

Principal in, one guilty as, who continues to aid removal after discovering theft. *Green*, 114/918, 41 S. E. 55.

Manslaughter. Principal in second degree. *McDonald*, 23 A. 125, 97 S. E. 556.

Murder, accessory before the fact of. *Cantrell*, 141/98, 80 S. E. 649; *Bivins*, 147/229, 93 S. E. 213.

Aiding and abetting. Evidence of consent and concurrence, distinct from mere presence, etc. *Fudge*, 148/149, 95 S. E. 980.

Aiding and abetting, presence and participation; guilt as principal in second degree. *Bexley*, 141/2, 80 S. E. 314.

Persons capable of committing crimes, as principals and as accessories. *Bishop*, 118/709, 45 S. E. 614. See *Rice*, 118/48, 44 S. E. 805, 98 Am. St. R. 99; *Ware*, 118/752, 45 S. E. 615.

Presence during commission of crime, without aiding or abetting, not make one principal in second degree. *Thornton*, 119/437, 46 S. E. 640.

Not sufficient to render one an aider or abettor. *Harris*, 19 A. 742, 92 S. E. 224.

Presumption as to criminal responsibility. *Wilson*, 9 A. 286, 70 S. E. 1128.

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Principal and accessory before the fact may be charged in same indictment, in one count. A sufficient charge. Evidence necessary on trial of accessory, and what admissible. *Rawlins*, 124/32, 33, 34, 52 S. E. 1.

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Law as to, considered. Subornation of perjury. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145. Policy scheme. *Thomas*, 118/774, 45 S. E. 622. Embezzlement. *Bishop*, 118/799, 45 S. E. 614.

Distinction in offenses of. *Riggins*, 116/594, 42 S. E. 707.

Principals, all are, in misdemeanors. *Arthur*, 146/829, 92 S. E. 637; *Beaty*, 7 A. 328, 66 S. E. 808.

Proper charge to jury as to, in misdemeanor case. *Bracewell*, 21 A. 133, 94 S. E. 91.

Principals in first and second degrees defined. *Stallings*, 136/131, 70 S. E. 1015; *Smith*, 127/272, 56 S. E. 360.

Indictment and evidence, when sufficient. *McLeod*, 128/17, 57 S. E. 83; *Bradley*, 128/20, 57 S. E. 237.

One indicted as principal in first degree (of burglary), convicted on proof that he was principal in second degree. *August*, 11 A. 798, 76 S. E. 164.

In murder. *Patterson*, 124/5, 52 S. E. 77; *Walker*, 136/126, 70 S. E. 1016.

Where all are punished alike, no ground for distinction between. *Cantrell*, 141/103, 80 S. E. 649; *Lowe*, 125/55, 53 S. E. 1038; *Lewis*, 136/355, 71 S. E. 417; *Jones*, 130/274, 60 S. E. 840.

Punishment of. Evidence; admissibility, and sufficiency for conviction. *Lewis*, 136/355, 71 S. E. 417.

Principal in second degree, definition of. *Hines*, 16 A. 414, 85 S. E. 452.

Of murder. Applicability of law to facts in evidence. *Thompson*, 147/745, 95 S. E. 292. Non-application. *Goolsby*, 147/169, 170, 93 S. E. 88.

Error in charge as to what would render one guilty as. *Bryant*, 15 A. 535, 83 S. E. 795.

Evidence not warranting conviction of accused as. *Thornton*, 119/437, 46 S. E. 640.

In assault with intent to murder; facts authorizing conviction as. *Bolton*, 21 A. 184, 94 S. E. 95.

In burglary, defined. Punished like principal in first degree; indictment need not distinguish them. *McWhorter*, 118/55, 44 S. E. 873. In embezzlement. *Bishop*, 118/799, 45 S. E. 614.

In burglary, indicted as principal in first degree, may be found guilty generally. *Lofton*, 121/172, 48 S. E. 908.

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Of voluntary manslaughter. *McDonald*, 23 A. 125, 97 S. E. 556.

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Whether one indicted as principal in first degree may be convicted as principal in second degree. *Maughon*, 9 A. 567, 71 S. E. 922.

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Servant answerable where master not present directing and supervising. *O'Neil*, 116/840, 43 S. E. 248.

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Not included in prohibitory statute, unless by express terms or necessary implication. *Barker*, 118/35, 44 S. E. 874.

Not made party, by service on solicitor. *Auto Highball Co.*, 11 A. 619, 75 S. E. 914.

3. JURISDICTION—VENUE.

Abandonment of child, venue in county where dependency begins. *Cleveland*, 7 A. 622, 67 S. E. 696; *Ware*, 7 A. 797, 68 S. E. 443; *Boyd*, 18 A. 623, 89 S. E. 1091. Venue not proved. *Parish*, 10 A. 836, 74 S. E. 445.

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Bigamy, venue of, was place of bigamous marriage, not of cohabitation. *McBride*, 16 A. 240, 85 S. E. 86. In coun-

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Not sufficient to render one an aider or abettor. *Harris*, 19 A. 742, 92 S. E. 224.

Presumption as to criminal responsibility. *Wilson*, 9 A. 286, 70 S. E. 1128.

As to capacity. *Morrow*, 13 A. 189, 79 S. E. 63.

Principal and accessory before the fact may be charged in same indictment, in one count. A sufficient charge. Evidence necessary on trial of accessory, and what admissible. *Rawlins*, 124/32, 33, 34, 52 S. E. 1.

Charge sufficient. *Carter*, 106/375, 32 S. E. 345, 71 Am. St. R. 262.

Rule as to. *Riggins*, 116/594, 42 S. E. 707.

Law as to, considered. Subornation of perjury. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145. Policy scheme. *Thomas*, 118/774, 45 S. E. 622. Embezzlement. *Bishop*, 118/799, 45 S. E. 614.

Distinction in offenses of. *Riggins*, 116/594, 42 S. E. 707.

Principals, all are, in misdemeanors. *Arthur*, 146/829, 92 S. E. 637; *Beaty*, 7 A. 328, 66 S. E. 808.

Proper charge to jury as to, in misdemeanor case. *Bracewell*, 21 A. 133, 94 S. E. 91.

Principals in first and second degrees defined. *Stallings*, 136/131, 70 S. E. 1015; *Smith*, 127/272, 56 S. E. 360.

Indictment and evidence, when sufficient. *McLeod*, 128/17, 57 S. E. 83; *Bradley*, 128/20, 57 S. E. 237.

One indicted as principal in first degree (of burglary), convicted on proof that he was principal in second degree. *August*, 11 A. 798, 76 S. E. 164.

In murder. *Patterson*, 124/5, 52 S. E. 77; *Walker*, 136/126, 70 S. E. 1016.

Where all are punished alike, no ground for distinction between. *Can-trell*, 141/103, 80 S. E. 649; *Lowe*, 125/55, 53 S. E. 1038; *Lewis*, 136/355, 71 S. E. 417; *Jones*, 130/274, 60 S. E. 84Q.

Punishment of. Evidence; admis-sibility, and sufficiency for conviction. *Lewis*, 136/355, 71 S. E. 417.

Principal in second degree, definition of. *Hines*, 16 A. 414, 85 S. E. 452.

Of murder. Applicability of law to facts in evidence. *Thompson*, 147/745, 95 S. E. 292. Non-application. *Gools-by*, 147/169, 170, 93 S. E. 88.

Error in charge as to what would render one guilty as. *Bryant*, 15 A. 535, 83 S. E. 795.

Evidence not warranting conviction of accused as. *Thornton*, 119/437, 46 S. E. 640.

In assault with intent to murder; facts authorizing conviction as. *Bol-ton*, 21 A. 184, 94 S. E. 95.

In burglary, defined. Punished like principal in first degree; indictment need not distinguish them. *McWhorter*, 118/55, 44 S. E. 873. In embezzle-ment. *Bishop*, 118/799, 45 S. E. 614.

In burglary, indicted as principal in first degree, may be found guilty gen-erally. *Lofton*, 121/172, 48 S. E. 908.

May be charged as joint principal; may be convicted after acquittal of principal in first degree. *Maughon*, 9 A. 559, 71 S. E. 922.

None in misdemeanors. *Slaughter*, 113/286, 38 S. E. 854, 84 Am. St. R. 242; *Smith*, 23 A. 140, 98 S. E. 115; *Futch*, 137/75, 72 S. E. 911; *Bexley*, 141/2, 80 S. E. 314.

Of voluntary manslaughter. *McDon-ald*, 23 A. 125, 97 S. E. 556.

Of murder. *Reeves*, 135/311, 69 S. E. 536. Proper charge to jury as to who is. *Harris*, 19 A. 742, 92 S. E. 224.

Whether one indicted as principal in first degree may be convicted as princi-pal in second degree. *Maughon*, 9 A. 567, 71 S. E. 922.

Prosecutor is not party or privy in crimi-nal case; acquittal is no bar to civil suit by him. *Beckworth*, 6 A. 859, 65 S. E. 1075.

Railroad-crossing over public road; who indictable for failure to erect blow-post, and to blow whistle and check speed. *Southern Ry. Co.*, 124/1009, 53 S. E. 508.

Rape by boy under fourteen years; presumption against incapacity must be rebutted, to convict. *Bird*, 110/315, 35 S. E. 156; *Carroll*, 18 A. 203, 89 S. E. 176.

Evidence authorizing conviction. *Mays*, 18 A. 241, 89 S. E. 174.

Receiver of stolen goods is not accomplice of principal thief. *Bradley*, 2 A. 622, 58 S. E. 1064.

Responsibility for crime, general test of, ability to distinguish right from wrong. *Carter*, 2 A. 254, 58 S. E. 532.

Sale of mortgaged personal property, one aiding and abetting, who did not execute the mortgage, may be convicted as a principal. *Wyatt*, 16 A. 817, 81 S. E. 802.

Unlawful sale by club, not render member guilty, when. *Wright*, 14 A. 185, 80 S. E. 544.

Servant answerable where master not present directing and supervising. *O'Neil*, 116/840, 43 S. E. 248.

State, or its subdivision or agencies, not bound by statute not manifestly intended to apply to. *Fowler*, 5 A. 42, 62 S. E. 660.

Not included in prohibitory statute, unless by express terms or necessary implication. *Barker*, 118/35, 44 S. E. 874.

Not made party, by service on solicitor. *Auto Highball Co.*, 11 A. 619, 75 S. E. 914.

3. JURISDICTION—VENUE.

Abandonment of child, venue in county where dependency begins. *Cleveland*, 7 A. 622, 67 S. E. 696; *Ware*, 7 A. 797, 68 S. E. 443; *Boyd*, 18 A. 623, 89 S. E. 1091. Venue not proved. *Parish*, 10 A. 836, 74 S. E. 445.

Accusation, venue must be definitely laid in. *Norris*, 15 A. 512, 83 S. E. 866.

Bind over to superior court, judge of criminal court of Atlanta can not, on trial. *Bell*, 103/397, 30 S. E. 294, 68 Am. St. R. 102.

Bigamy, venue of, was place of bigamous marriage, not of cohabitation. *McBride*, 16 A. 240, 85 S. E. 86. In coun-

ty where offense committed. *Pitts*, 147/801, 95 S. E. 706.

Boundary line between counties, venue of offense committed on. *Roberts*, 145/78, 88 S. E. 559.

Burglary, venue of; place of possession of stolen goods, immaterial on question as to. *Peterson*, 6 A. 491, 65 S. E. 311.

Certiorari may be heard in different county from that of trial. *Avery*, 4 A. 460, 61 S. E. 839.

Error in refusing to sanction petition for; alleging that verdict was contrary to evidence, and which did not show that the venue was proved. *Washington*, 113/698, 39 S. E. 294; *Smith*, 105/831, 31 S. E. 542.

Case on, remanded for new trial, where venue not proved. *Cook*, 6 A. 356, 64 S. E. 1107.

Allegation in petition for, that venue was not proved, made sanction necessary. *Miller*, 126/558, 55 S. E. 405.

Venue not shown by evidence in verified petition for, error to refuse sanction. *Minor*, 7 A. 471, 67 S. E. 108; *Andrews*, 7 A. 472, 67 S. E. 109; *Geisberg*, 7 A. 558, 67 S. E. 222; *Green*, 4 A. 260, 61 S. E. 234; *Simpson*, 8 A. 535, 69 S. E. 1084.

Change of venue not ignored because of a defect in the indictment that was waived by plea to merits. *Johnston*, 118/313, 45 S. E. 38, 46 S. E. 488.

All jurisdiction goes, on any indictment for the same offense where venue changed. Dissent: Second indictment a different proceeding. *Johnston*, 118/310, 45 S. E. 38, 46 S. E. 488.

Exception to refusal of, not properly made here. *Williford*, 121/173, 48 S. E. 962.

On account of condition of public mind; responsibility and discretion of judge. *Rawlins*, 124/33, 52 S. E. 1.

Threats of lynching, when ground for. *Marshall*, 20 A. 416, 93 S. E. 98. Lynching, danger of, as ground for. *Nix*, 22 A. 136, 95 S. E. 534.

Discretion not abused in refusing. *Vanderford*, 126/753, 55 S. E. 1025; *Young*, 125/584, 54 S. E. 82.

Refused after announcing that it would be granted. *Glover*, 129/717, 59 S. E. 816.

Refused, on conflicting evidence; judgment not manifestly erroneous, affirmed. *Davis*, 23 A. 223, 98 S. E. 111.

Discretion as to. Overruling of motion is for direct exception; not ground for new trial. *Jones*, 130/274, 60 S. E. 840.

Statutory grounds. Bill of exceptions direct, when lies; when not. *Coleman*, 140/619, 79 S. E. 548.

Under act of 1911. Issue not a "criminal case," and reviewable in Supreme Court. Evidence conflicting, no error in refusing change. *Wilburn*, 140/138, 78 S. E. 819.

Under act of 1911. Error in refusal. *Kennedy*, 141/314, 80 S. E. 1012; *Graham*, 141/812, 82 S. E. 282. No error in refusal. *Shepherd*, 141/527, 81 S. E. 441; *Coleman*, 141/737, 82 S. E. 228.

Error in refusing, on facts shown. Dissent; no abuse of discretion. *Newman*, 143/270, 84 S. E. 579. No error. *Edwards*, 143/302, 84 S. E. 968.

Granted, accused can not withdraw application and demand trial in county where indictment found. Certified copy of order, original indictment and other papers, to be transmitted. Judgment in substance changing venue, not expressly so stating. *Graham*, 143/440, 85 S. E. 328, Ann. Cas. 1917A, 595.

Error in refusing. *Bivins*, 145/416, 89 S. E. 370. Refusal affirmed by divided court. *Goolsby*, 145/424, 89 S. E. 341.

Over objections of accused, is no final judgment for writ of error. *Brannon*, 147/499, 94 S. E. 759.

Conditions existing at time of petition for, as shown by the record, should alone be considered, in passing on the petition, in absence of evidence as to change of conditions. Impartial jury not obtainable in county; evidence requiring change of venue. *Marshall*, 20 A. 416, 93 S. E. 918.

Not required by evidence here, as to danger of mob violence. *Nix*, 22 A. 136, 95 S. E. 534.

Discretion as to refusing; what should appear in exceptions to refusal. *Cook*, 22 A. 774, 97 S. E. 264.

Charge to jury, as to particular facts which would authorize them to find venue (of cow-stealing) had been proved, not error. *Dyer*, 6 A. 390, 65 S. E. 42.

Instruction that burden was on State to prove every material fact alleged, sufficient as to venue. *Bailey*, 23 A. 146, 98 S. E. 89.

Refusal of, as to venue, error; not reversible here. *Holcombe*, 5 A. 47, 62 S. E. 647.

Need not direct jury as to venue in connection with each proposition. *Keys*, 112/392, 37 S. E. 762, 81 Am. St. R. 63.

Not necessary (without request) that the crime must have been committed in county of trial. *Livingston*, 18 A. 679, 90 S. E. 287.

Cheating and swindling. Venue of, is in county in which owner of the money or other property was deprived of it. *Davis*, 20 A. 72, 92 S. E. 552.

Under "labor contract law." Venue of prosecution. *Davis*, 16 A. 162, 84 S. E. 596; *Lewis*, 15 A. 412, 413, 83 S. E. 439.

Venue in county where advance received. *Dyas*, 126/556, 55 S. E. 488.

Circumstantial evidence sufficient as to venue. *Alcorn*, 21 A. 148, 94 S. E. 46; *McCoy*, 123/145, 51 S. E. 279.

Showing venue of cow-stealing. *Graham*, 16 A. 221, 226, 84 S. E. 981.

Sufficient to show venue of unlawful disposition of mortgaged property. *Linder*, 17 A. 520, 87 S. E. 703.

Insufficient circumstances. *Wilson*, 6 A. 16, 64, 64 S. E. 112. Sufficient proof as to. *Dean*, 6 A. 251, 64 S. E. 671; *Dyer*, 6 A. 390, 65 S. E. 42; *Welsh*, 6 A. 783, 65 S. E. 815.

City designated that the crime was committed in, not proof of venue; prior decisions followed, but not approved. *Stringfield*, 4 A. 842, 62 S. E. 569.

Venue not established by proof that the crime was committed "in the city of Atlanta." Former decisions followed but not approved. **Murphy**, 121/142, 49 S. E. 909.

Evidence that offense was committed in "the city of Thomasville," presumed to refer to city of that name in which the accused was on trial for violating ordinance. **Mosley**, 9 A. 500, 71 S. E. 765.

Venue not proved; "in Lawrenceville in front of Dan Rutledge's store." **Cooper**, 106/120, 32 S. E. 23.

Venue, not shown by proof of offense at a designated store on named streets, in case tried in municipal court; no proof that the place was in the city. **Simpson**, 8 A. 535, 69 S. E. 1084.

Not shown to be in corporate limits, conviction under municipal ordinance set aside. **Ringer**, 6 A. 790, 65 S. E. 814.

Venue of sale, shown by testimony that it occurred at the defendant's house, and that she "lives here in Jesup." **Riggins**, 17 A. 331, 86 S. E. 736.

Venue proved: "in this city," on designated street corner. **Fountain**, 2 A. 717, 58 S. E. 1129.

City court without jurisdiction of felony. **Oglesby**, 1 A. 195, 57 S. E. 938.

Without jurisdiction, the evidence showing that the misdemeanor in question was merged into a felony; reversal with direction to commit the defendant, to abide action of the grand jury. **Eberhart**, 5 A. 174, 62 S. E. 730.

Jurisdiction of, excluded by proof of value here. **Tolliver**, 126/587, 55 S. E. 478.

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When without jurisdiction to try one demanding indictment by grand jury. **Hopkins**, 5 A. 699, 63 S. E. 718.

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Conflict of jurisdiction of different courts, as to prisoner. **Coleman**, 4 A. 786, 62 S. E. 487.

Consent, jurisdiction not given by; where plea of guilty was entered and sentence imposed in a county other than the one in which the crime was alleged to have been committed. **Barra**, 22 A. 644, 97 S. E. 86.

Constitutional law as to venue; and right of accused. **Pope**, 124/801, 53 S. E. 384, 110 Am. St. R. 197, 4 Ann. Cas. 551.

Cropper who took part of crop to another county and there unlawfully sold it could be tried in the county from which he removed it; it could be inferred that he had an intent to sell when he carried it off. **Curry**, 17 A. 272, 86 S. E. 533.

Decisions as to venue, distinguished. **Curry**, 17 A. 272, 86 S. E. 533.

Embezzlement, venue. **Mangham**, 11 A. 428, 436, 75 S. E. 512.

By bank's officer misappropriating its certificates while out of the State; venue. **Carter**, 143/632, 85 S. E. 884; **Carter**, 17 A. 90, 86 S. E. 287.

Failure to prove venue is fatal to a conviction. **Wall**, 5 A. 306, 63 S. E. 27; **Shipman**, 5 A. 664, 63 S. E. 671.

Taken advantage of under general exception that the verdict is contrary to law and the evidence. **Brown**, 123/502, 51 S. E. 505.

Question as to venue, not raised in trial court, not considered. **Palmer**, 19 A. 752, 92 S. E. 233.

No reason for granting certiorari, where such failure is not distinctly alleged. **Rice**, 15 A. 505, 83 S. E. 868.

Question not raised by allegation that "no jurisdiction was shown in the" court. **Davis**, 16 A. 239, 85 S. E. 81.

Question as to venue, not raised in trial court or in petition for certiorari, not considered. **Hornbuckle**, 18 A. 17, 88 S. E. 748; **Harvey**, 18 A. 54, 88 S. E. 798; **Metz**, 18 A. 289, 89 S. E. 303.

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Legislation suggested, to the effect that a new trial shall not be required

on account of failure to prove venue, unless the question as to such failure is made at the trial. **Murphy**, 121/142, 48 S. E. 909; **Stringfield**, 4 A. 842, 62 S. E. 569; **Minter**, 7 A. 15, 65 S. E. 1079.

Question as to venue not specifically raised in motion for new trial, not considered (since act of 1911). **Moore**, 14 A. 255, 80 S. E. 507; **Greenfield**, 14 A. 603, 81 S. E. 814; **Gentry**, 15 A. 641, 83 S. E. 1099; **Davis**, 16 A. 162, 84 S. E. 596; **Marshman**, 138/864, 76 S. E. 572.

Question as to venue sufficiently made, where raised specifically in motion for new trial, though not raised at trial. **Wade**, 11 A. 415, 75 S. E. 494. **Fishing**, venue of, sufficient proof as to **Knight**, 15 A. 474, 83 S. E. 797.

Forgery, venue of; when presumed that the place where the instrument was uttered was the place where forged. **Heard**, 121/138, 48 S. E. 905.

Venue of; evidence conflicting, conviction sustained. **Long**, 118/319, 45 S. E. 416.

Venue sufficiently shown. **Williamson**, 18 A. 753, 90 S. E. 485.

Grade of offense, jurisdiction as to, when not shown wanting by evidence that defendant stole more than accusation alleged. **Seals**, 107/713, 33 S. E. 392.

Homicide, venue of, established by evidence. **Mulligan**, 18 A. 471, 89 S. E. 541.

Indictment sufficient as to venue. **Bridges**, 103/30, 29 S. E. 859; **Eaves**, 113/754, 39 S. E. 318.

"**Labor contract law**," venue in prosecution under. **Lewis**, 15 A. 412, 413, 83 S. E. 439; **Davis**, 16 A. 162, 84 S. E. 596; **Dyas**, 126/556, 55 S. E. 488.

Larceny, accusation or indictment for, lies in any county to which thief carries the stolen property. **Howard**, 3 A. 659, 60 S. E. 328; **Morton**, 118/306, 45 S. E. 395.

Venue in either county, where property removed from one to another. **Green**, 114/918, 41 S. E. 55.

Of animal taken in one county and sold in another, venue could be laid in

either county. **Alcorn**, 21 A. 148, 149, 94 S. E. 46.

Venue of, in case one who drove horses from one county to another. **Clanton**, 17 A. 474, 87 S. E. 691.

Of hog, venue sufficiently shown by evidence. **McCarthy**, 18 A. 337, 89 S. E. 348; **Cook**, 9 A. 208, 70 S. E. 1019.

Of cattle, venue proved. **Dean**, 6 A. 250, 64 S. E. 671; **Graham**, 16 A. 221, 226, 84 S. E. 981.

Of cow, circumstantial evidence as to venue, and charge to jury as to facts from which inferable. **Dyer**, 6 A. 390, 65 S. E. 42.

Of cow, venue shown by owner's testimony that it was missing from its range, in the county of the trial, and was never again seen by him. **Livingston**, 18 A. 679, 90 S. E. 287.

Proof that the accused carried the stolen property into the county in which it was alleged to have been stolen, sufficient. **McCoy**, 123/143, 51 S. E. 279. See **Edwards**, 123/531, 51 S. E. 576.

Rule that thief is indictable in any county in which he carries the stolen goods, not applied as to larceny from railroad-car. **Williams**, 105/743, 31 S. E. 749.

From railroad car, conviction unauthorized for want of proof of venue. **Howard**, 3 A. 659, 60 S. E. 328.

After trust, venue of. **Chancey**, 18 A. 328, 89 S. E. 461; **Raiden**, 1 A. 532, 57 S. E. 898, 989.

After trust, venue shown by proof that money was intrusted in a certain county; there being no proof that the conversion was elsewhere. **Bowen**, 16 A. 179, 84 S. E. 793; **Keys**, 112/392, 37 S. E. 762, 81 Am. St. R. 63; **McCoy**, 19 A. 32, 90 S. E. 737. See **Innes**, 19 A. 273.

Letter from another State, venue of crime committed in sending. **Rose**, 4 A. 588, 62 S. E. 117.

Merger of misdemeanor into felony, as affecting jurisdiction. **Eberhart**, 5 A. 174, 62 S. E. 730.

Minor, venue of prosecution for furnishing intoxicating liquor to, by shipping

it to other county. **Newsome**, 1 A. 790, 58 S. E. 71.

Mortgaged property sold; evidence not proving the venue. **Ham**, 7 A. 57, 66 S. E. 22. **Sufficient**. **Davis**, 7 A. 333, 66 S. E. 960.

Venue not proved, conviction set aside. **Smith**, 121/196, 48 S. E. 912.

Municipal police court, jurisdiction of, to commit to jail or bind over to State court. **Newton**, 114/833, 40 S. E. 993.

Ordinance, rule as to venue applied to accusation of violation of. **Norris**, 15 A. 511, 512, 83 S. E. 866.

Jurisdiction of city to punish for acts made penal by State law, when legislature may confer. **Littlejohn**, 123/427, 51 S. E. 390. Legislature has no power to confer jurisdiction on municipal court, as to crimes against State. **Grant**, 105/428, 31 S. E. 429. See **Criminal Law**, 1 catchwords **Municipal**, **Nuisance**.

Murder, sufficient evidence of venue of. **Moore**, 130/322, 60 S. E. 544. Testimony not sufficient to show venue. **Holden**, 144/338, 87 S. E. 27.

Jurisdiction of, in county where mortal wound given. **Fitzgerald**, 136/163, 71 S. E. 128.

New county, effect of formation of, on pending cause. **Bundrick**, 125/753, 54 S. E. 683.

Venue is in the county embracing the territory in which the act was committed, though case pending before county divided. **Pope**, 124/801, 53 S. E. 384, 110 Am. St. R. 197, 4 Ann. Cas. 551.

Newly discovered evidence as to venue did not require new trial. **Campbell**, 10 A. 790, 74 S. E. 95.

Plea of not guilty involves issue as to venue; but it may be raised by special plea to the jurisdiction. **Knight**, 15 A. 474, 83 S. E. 797.

Products sold by planters; venue. **Moore**, 12 A. 576, 77 S. E. 1132.

Proof of venue must affirmatively appear. **Strozier**, 1 A. 285, 57 S. E. 969. Omission in brief of evidence can not be cured in the Supreme Court. **Smith**, 118/83, 44 S. E. 827.

Must be beyond reasonable doubt, to sustain conviction. **Jones**, 113/271, 38 S. E. 851.

By answer "yes," preceded by different questions of which only one related to venue. **Carroll**, 121/197, 48 S. E. 909.

Not made, conviction unauthorized. **Ware**, 3 A. 478, 60 S. E. 109; **Howard**, 3 A. 659, 60 S. E. 328.

Not made, conviction set aside. **Smith**, 121/196, 48 S. E. 912; **Williams**, 9 A. 169, 70 S. E. 891; **Williams**, 12 A. 364, 77 S. E. 183; **Dennis**, 19 A. 446, 91 S. E. 783; **Thomas**, 8 A. 95, 68 S. E. 522.

As to keeping liquor for sale. **Vittillard**, 20 A. 84, 92 S. E. 554.

Where offense committed on or near line dividing counties. **Cooper**, 2 A. 732, 59 S. E. 20.

Not in record; new trial required. **Akridge**, 9 A. 396, 71 S. E. 494; **Walden**, 9 A. 584, 71 S. E. 945.

Record not containing, judgment reversed, under assignment of error that conviction was contrary to law and evidence. **Alexander**, 105/834, 31 S. E. 754.

None in brief of evidence, new trial results. **Clark**, 110/911, 36 S. E. 297.

By inference not sufficient, unless it is the only possible inference. **Wade**, 11 A. 414, 416, 75 S. E. 494. Facts authorizing inference that crime was committed in a certain county. **Eady**, 18 A. 25, 88 S. E. 709.

Reversal because record did not show; rehearing not granted on account of matter afterwards sent up as omitted part of the record, showing such proof. **Edwards**, 123/531, 51 S. E. 576.

As laid, when necessary, and when not. **Minter**, 104/752, 30 S. E. 989.

Point that venue was not proved, not argued in brief of plaintiff in error, treated as abandoned. **Barney**, 22 A. 121, 95 S. E. 533.

Not made by witness testifying, in connection with statement as to unlawful sale of liquor, that he found de-

fendant on a road in the county. *Minter*, 7 A. 14, 16, 65 S. E. 1079.

Not made by witness's testimony that he "was about fifty yards from them on the public road in this county." *Jones*, 113/271, 38 S. E. 851.

Not made by testimony as to distance from court-house, here. *Wade*, 11 A. 411, 413, 75 S. E. 494.

General assignment of error, that conviction is contrary to evidence, is insufficient to raise question as to. *Minor*, 7 A. 471, 67 S. E. 108; *Andrews*, 7 A. 472, 67 S. E. 109.

Sufficient. *Womble*, 107/669, 33 S. E. 630; *Watkins*, 125/143, 53 S. E. 1024; *Little*, 3 A. 442, 60 S. E. 113; *Garnett*, 10 A. 110, 114, 72 S. E. 951; *Peacock*, 10 A. 402, 73 S. E. 404; *Rickerson*, 10 A. 464, 73 S. E. 681; *Williams*, 15 A. 306, 82 S. E. 938; *Beatty*, 15 A. 515, 516, 83 S. E. 885; *August*, 20 A. 168, 92 S. E. 956; *Dowdell*, 21 A. 78, 93 S. E. 1026; *Coldwell*, 21 A. 124, 94 S. E. 76; *Poulos*, 22 A. 239, 95 S. E. 738; *Walters*, 23 A. 666, 99 S. E. 138.

"In the edge of" the place of jurisdiction. *Lewis*, 124/62, 52 S. E. 81.

"In this county." *Malone*, 116/272, 42 S. E. 468.

That defendant "lived at" a certain street number, in the county and that the crime was committed "at [defendant's] house." *Johnson*, 7 A. 551, 67 S. E. 224.

Insufficient. *Parrish*, 10 A. 836, 74 S. E. 445; *Williams*, 105/606, 31 S. E. 546; *Williams*, 105/743, 31 S. E. 749. Venue not proved: 35 or 40 feet from house in the county. *Green*, 110/270, 34 S. E. 563. Venue not proved; "at the corner of Farm and Bryan." *Kolman*, 124/63, 52 S. E. 82. At "Ponce De Leon Park." *Edwards*, 124/78, 52 S. E. 297.

Finding as to, on conflicting evidence, not set aside. *Strange*, 9 A. 204, 70 S. E. 968. Circumstances sufficient as proof of (hog-stealing). *Cook*, 9 A. 208, 70 S. E. 1019.

Venue is jurisdictional; circumstances not sufficient to show, in this

case. *Smith*, 2 A. 413, 58 S. E. 549. Uncertainty in evidence may result in acquittal. *Cooper*, 2 A. 730, 59 S. E. 20. Failure to prove it is cause for new trial on general grounds. *Mill*, 1 A. 134, 57 S. E. 969.

When more particular location immaterial, venue being alleged and proved. *Hall*, 120/142, 47 S. E. 519.

Railroad-car, jurisdiction of State court to try one charged with breaking and entering and stealing whisky in course of interstate transportation; question as to, not properly presented, and without merit. *Gates*, 20 A. 171, 92 S. E. 974.

Remittitur received in vacation; power of judge to make judgment of Supreme Court the judgment of superior court. *Wiggins*, 114/64, 39 S. E. 865.

Reopening case, to allow proof of venue, not error. *Brooks*, 12 A. 104, 76 S. E. 765.

Residence of accused is not material in fixing venue; indictment need not state his place of residence. *Tarver*, 123/494, 51 S. E. 501.

Sale of incumbered property. Decisions as to venue, distinguished. *Curry*, 17 A. 272, 86 S. E. 533. "Sell or otherwise dispose of;" meaning, in Penal Code. *Bugg*, 17 A. 213, 214, 86 S. E. 405; *Linder*, 17 A. 520, 87 S. E. 703. Venue of unlawful sale, when at place where shipment received. *Beatty*, 7 A. 238, 66 S. E. 808. Of unlawful sale of mortgaged property is place of sale; evidence insufficient to show venue. *Ham*, 7 A. 57, 66 S. E. 22.

School-teacher's license, conviction of altering; what sufficient proof of venue. *Heard*, 121/138, 48 S. E. 905.

Sentence no bar to subsequent conviction, where court had no jurisdiction. *Barrs*, 22 A. 644, 97 S. E. 86.

Jurisdiction not lost, by reason of order suspending sentence, to impose punishment without order nisi. *Hancock*, 140/688, 79 S. E. 558.

State of Georgia, point on bridge over Savannah river held to be in. *James*, 10 A. 13, 72 S. E. 600.

Testimony giving name of county, but not State, sufficient, where the trial was in a county of that name. *Lewis*, 129/731, 59 S. E. 782.

In Franklin county means in Georgia, not North Carolina. *Knox*, 114/272, 40 S. E. 233.

Transfer of property by means of bill of lading attached to draft on person in another county, venue of offense committed by. *Moore*, 12 A. 576, 77 S. E. 1132.

United States, jurisdiction not in. *Carraway*, 16 A. 161, 84 S. E. 615.

Vacation, no power in, to set aside judgment. *Haskens*, 114/837, 40 S. E. 997.

Waiver as to venue. *Barrs*, 22 A. 644, 97 S. E. 86.

By failure to object as to jurisdiction. *Progress Club*, 12 A. 175, 76 S. E. 1029.

4. INDICTMENTS, DEFENSES, PLEAS, TRIALS.

Abandonment of child, accusation for, need not allege sex of child, or show in what way it was left in a dependent and destitute condition. *Woodard*, 18 A. 59, 88 S. E. 825.

Allegation that child was in destitute condition, surplusage not requiring proof; allegation as to dependence, sufficient. *Daniels*, 8 A. 469, 69 S. E. 588.

Indictment sufficient; allegation that Lum Rimes abandoned "his" child meant that he was the father. *Rimes*, 7 A. 556, 67 S. E. 223.

Abatement, plea in, as to disqualification of grand jurors, too late. *Brooks*, 12 A. 105, 76 S. E. 765.

For lack of evidence before grand jury as to joint defendant other than accused on trial; plea demurrable. *Chapman*, 148/531, 97 S. E. 546; *Johnson*, 148/546, 97 S. E. 515.

Disqualification of grand juror, no ground for plea. *Garnett*, 10 A. 109, 112, 72 S. E. 951.

Disqualification of grand jurors proper affectum, no ground for plea. Nor pendency of another indictment. *Cabaniss*, 8 A. 129, 68 S. E. 849; *Hall*, 7 A. 115, 66 S. E. 390.

Of indictment for disqualification of grand juror, plea in, not sustained by evidence. *Bexley*, 141/1, 80 S. E. 134. As to failure of foreman to sign entry of true bill. *Cleveland*, 141/829, 82 S. E. 243.

Of indictment, for ineligibility of grand jurors. *Tompkins*, 138/465, 75 S. E. 594.

Issues raised by plea in, triable in city court to which indictment transferred, unless correction of minutes of superior court involved. *Wells*, 118/557, 45 S. E. 443.

No evidence to support plea of, proper practice is to overrule; but striking is no cause for reversal. *Wells*, 118/557, 45 S. E. 443.

Pendency of another indictment; no ground for plea. *Harris*, 11 A. 137, 74 S. E. 895; *Hurat*, 11 A. 754, 76 S. E. 78; *Johnston*, 118/314, 45 S. E. 381; 46 S. E. 488.

Plea alleging disqualification of prosecuting officer, not entertained. *Bush*, 10 A. 544, 73 S. E. 697; *Christopher*, 21 A. 244, 94 S. E. 72.

Plea good in, as to insufficient oath of witness before grand jury. *Switzer*, 7 A. 7, 65 S. E. 1079.

Plea in, because prosecutor's name not indorsed on special presentment, not sustained. *Hudgins*, 136/699, 71 S. E. 1065.

Plea in, for change of foreman of grand jury, properly overruled. *Dickens*, 137/523, 73 S. E. 826.

Plea in, can not be sustained without evidence to support it. *Hightower*, 22 A. 276, 95 S. E. 873.

Plea in, for omissions from jury lists, when properly overruled. *Dickens*, 137/523, 73 S. E. 826.

When proper to direct verdict against plea. *Casper*, 22 A. 126, 128, 95 S. E. 534.

Proper practice to traverse plea in. When failure so to do was no cause

for reversal. Allegations of plea not taken as true because not traversed; they must be proved. **Wells**, 118/557, 45 S. E. 443.

Refusal to allow plea filed after plea of not guilty, not error. **Wilkerson**, 14 A. 475, 81 S. E. 395.

Of indictment or accusation, as founded on affidavit of incompetent witness. **Bell**, 14 A. 809, 82 S. E. 376.

Absence from court, not "voluntary absence." **Mager**, 21 A. 139, 94 S. E. 82.

Of accused from court-room, as affecting trial. **Bagwell**, 129/171, 58 S. E. 650.

Of accused when judge recharged jury, not shown with sufficient certainty by judge's certificate here. **Brice**, 117/466, 43 S. E. 715.

Of accused from court-room when jury was recharged, cause for new trial. **Mills**, 23 A. 14, 97 S. E. 408.

Of accused at reception of verdict, makes it void, if presence is not waived. **Lyons**, 7 A. 50, 66 S. E. 149.

Of accused when verdict received, acts amounting to waiver of right to be present. **Cawthon**, 119/396, 46 S. E. 897.

Of accused when verdict received, not vitiate verdict, when he was at large under bond obligating him to be present. **Wilkerson**, 14 A. 475, 81 S. E. 395.

Of accused when sentence was pronounced; mode of exception. **Earnest**, 23 A. 138, 97 S. E. 883.

Of accused under bond at time of trial, effect of. **Fraser**, 21 A. 154, 155, 94 S. E. 79.

Of accused while witness testifying, when not require new trial. **Vanderford**, 126/753, 55 S. E. 1025.

Of counsel when verdict rendered, no ground for new trial, when. **Nowell**, 18 A. 143, 88 S. E. 909.

Of counsel without leave, action during. **Roberson**, 135/654, 70 S. E. 175.

Of defendant during trial, reference to, in brief of evidence, not considered. **Fouraker**, 4 A. 695, 62 S. E. 116.

Of judge during part of trial, effect of. **Ward**, 14 A. 424, 81 S. E. 130;

Brantley, 10 A. 24, 72 S. E. 520; **Martin**, 10 A. 455, 73 S. E. 686.

Of witness, when not treated as "inaccessible." **Taylor**, 126/557, 55 S. E. 474.

Accessory before the fact, indictment of, when sufficient. **Snell**, 13 A. 158, 79 S. E. 71.

Accidental or intentional shooting, issue as to. **Woods**, 137/85, 72 S. E. 908; **Washington**, 137/218, 73 S. E. 512; **Josey**, 137/769, 774, 74 S. E. 282.

Accusation, affidavit as basis of, what sufficient. **Brown**, 109/570, 34 S. E. 1031; **Surrels**, 113/715, 39 S. E. 299; **Murphy**, 119/300, 46 S. E. 450.

Affidavit charging only "misdemeanor," sufficient basis for accusation charging any misdemeanor. **Frazier**, 11 A. 261, 262, 75 S. E. 10.

Affidavit, as basis for; attestation by commercial notary sufficient, when law silent as to attesting officer. **Shuler**, 125/778, 54 S. E. 689.

Affidavit on which based, not attested by proper officer, and not purporting to be made in open court, void, and not amendable. **Gilbert**, 17 A. 143, 86 S. E. 415.

Affidavit of prosecutor, as basis of. **Eady**, 10 A. 818, 74 S. E. 303.

Affidavit on which based, sufficient without specifying particular misdemeanor. **Williams**, 107/693, 33 S. E. 641.

Affidavit on which based may charge only "misdemeanor;" description may be amplified in accusation. **Hunter**, 4 A. 579, 61 S. E. 1130. When accusation not quashed because of wrong description of offense in affidavit. **Crawford**, 4 A. 789, 62 S. E. 501.

Amendment of: See catchword, "Amendment."

Barred, where filed March 16, 1912, and misdemeanor charged was committed March 16, 1910. **McLendon**, 14 A. 274, 80 S. E. 692.

Based on affidavit of solicitor who signed the accusation, matter for plea in abatement, not for demurrer. **Tatum**, 22 A. 638, 96 S. E. 1046.

Based on sufficient affidavit. **Howell**, 5 A. 186, 62 S. E. 1000.

Broader than affidavit therefor, bad. **Blake**, 112/537, 37 S. E. 870; **Glass**, 119/299, 46 S. E. 435.

Broader than affidavit on which based, bad; rule applied where affidavit charged sale of liquor, and accusation charged sale and (in a separate count) keeping on hand. **Frazier**, 11 A. 262, 75 S. E. 10.

Broader than affidavit in charging offense, not vitiated. **Taylor**, 120/484, 48 S. E. 158.

May be broader than affidavit and warrant. **Lepinsky**, 7 A. 288, 66 S. E. 965.

Can not be signed by one incompetent as witness against accused, when. **Smith**, 14 A. 614, 81 S. E. 912.

Charge to jury that they might convict on proof of commission of crime within two years prior to date of filing accusation (instead of affidavit), harmless error, under facts here. **Mathis**, 16 A. 381, 85 S. E. 352.

Date of crime in, need not be that alleged in warrant. **Shivers**, 123/538, 51 S. E. 596.

Defined. **Progress Club**, 12 A. 177, 76 S. E. 1029. Accusation in city court, not proper mode of prosecuting corporation; indictment necessary. **Ib.** 174. Accusation within the statute of limitations as to indictments for misdemeanors. **Flint**, 12 A. 169, 76 S. E. 1032.

Equivalent to information at common law, compared with indictment. **Wright**, 120/676, 48 S. E. 170; **Goldsmith**, 2 A. 283, 58 S. E. 486.

Evidence not admissible as to date of offense subsequent to date of affidavit. **Shealey**, 16 A. 191, 84 S. E. 839.

Failure to file accusation with clerk, no ground for arrest of judgment. **Smith**, 17 A. 612, 87 S. E. 846.

Form of, and in whose name to be made. **Flanders**, 9 A. 820, 72 S. E. 286.

In city court legally based on affidavit made before magistrate to pro-

cure warrant for arrest. **Griffin**, 3 A. 476, 60 S. E. 277.

In city court must be founded on affidavit definitely charging an offense. **Brown**, 16 A. 268, 85 S. E. 262. Must follow affidavit, and the proof must conform to both. **Ib.**; **Shealey**, 16 A. 192.

Incorrectly denominating the offense, not necessarily bad; test of sufficiency, nature of act alleged, and fullness with which set forth. **Crawford**, 4 A. 789, 62 S. E. 501.

Interlineation in, presumed to have been made at proper time and by proper authority. **Crawford**, 4 A. 789, 62 S. E. 501.

"In the name and behalf of the citizens of Georgia," not demurrable. **Mitchell**, 126/84, 54 S. E. 931.

In writing, when not required in municipal court. **Venable**, 7 A. 190, 66 S. E. 489.

Void because based on void affidavit; motion in arrest of judgment, proper. **Gilbert**, 17 A. 143, 86 S. E. 415.

May charge specific act included in general offense charged in affidavit. **Glass**, 119/299, 46 S. E. 435.

Meanings of, as equivalent of information at common law, or as including indictment. **Cleveland**, 141/823, 82 S. E. 243.

Must follow affidavit, and the proof must conform to both. **Brown**, 16 A. 268, 85 S. E. 262; **Shealey**, 16 A. 192, 84 S. E. 839.

Need not be exhibited on application for certiorari. **Green**, 4 A. 260, 61 S. E. 234.

No error in allowing name of defendant to be changed in affidavit and accusation, after call of case for trial and announcement of ready, by erasing "Cy" in the name of "Cy Bishop," and inserting "Corry." **Bishop**, 22 A. 784.

Not based on affidavit; point made first in appellate court, not considered. **Trentham**, 22 A. 135, 95 S. E. 538.

Not based on properly attested affidavit; ground for demurrer or motion to quash, not for motion for new trial. **Cooper**, 13 A. 686, 79 S. E. 764.

Not founded on affidavit, sufficient, in absence of statute requiring affidavit. **Davis**, 11 A. 10, 74 S. E. 442; **Frazier**, 11 A. 262, 75 S. E. 10.

Not required, for city-court judge to commit infant to training-school. **Wingate**, 147/192, 93 S. E. 206.

Objection to affidavit as part of, must be made by demurrer, motion to quash, or (after conviction) by motion in arrest, not by motion for new trial. **Stubbs**, 1 A. 504, 505, 58 S. E. 236; **Rogers**, 1 A. 527, 58 S. E. 236.

Of violation of ordinance, what sufficient. **Wynne**, 10 A. 818, 74 S. E. 286.

Omitted from record, presumed to cover offense shown by evidence, when. **Mattox**, 16 A. 568, 85 S. E. 765.

Should state it is based on affidavit of some one. Where this appears on face of record, demurrer overruled. **Mitchell**, 126/84, 54 S. E. 931.

Signed by prosecutor, but not by solicitor; no reason for excluding record of conviction, when. **Smith**, 11 A. 89, 74 S. E. 711. Accusation without warrant for arrest, trial on, not illegal. **Harris**, 11 A. 137, 74 S. E. 895.

Signing of, by solicitor. **Mitchell**, 126/84, 54 S. E. 931.

Six months' limitation as to new prosecution. **Crawford**, 4 A. 797, 62 S. E. 501.

Solicitor making affidavit as basis of, not disqualified from signing accusation. **Holt**, 11 A. 35, 74 S. E. 560. Accusation signed by solicitor pro tem., valid, when. **Horton**, 11 A. 33, 74 S. E. 559; **Holt**, 11 A. 34, 74 S. E. 560.

Statute requiring solicitor to "draw" accusation, complied with by dictating and signing. **Bryant**, 8 A. 389, 69 S. E. 121.

Submitting to trial under accusation, no waiver or indictment by grand jury as required by law. **Wright**, 16 A. 216, 84 S. E. 975.

Valid though no warrant for arrest was issued upon the affidavit on which the accusation was based. **Brown**, 109/570, 34 S. E. 1031.

When no written accusation is required in municipal court. **Norris**, 15 A. 511, 83 S. E. 866. Sufficient compliance with charter requirement as to. **Ib.** 511, 512.

Where indictment waived. **Belton**, 21 A. 792, 95 S. E. 299.

Whether judge disqualified to preside on trial is disqualified to attest affidavit to, not decided; another judge could not attest under city-court act. **Edmondson**, 123/194, 51 S. E. 301.

In criminal court of Atlanta, when sufficient. **Mitchell**, 126/84, 54 S. E. 931.

Accused improperly brought into court by order of judge, no ground for new trial. **Oglesby**, 121/603, 49 S. E. 706.

Acquiescence of owner after theft, not destroy its criminal element. **Waters**, 15 A. 342, 83 S. E. 200.

Acquittal does not result from interruption of cross-examination by illness of witness. **Gale**, 135/351, 69 S. E. 537.

No right to demand, on statement of judge's intention to declare mistrial. **Oliveros**, 118/776, 45 S. E. 596.

Of actual perpetrator of crime, not require acquittal of codefendant aiding and abetting. **Maughon**, 9 A. 559, 71 S. E. 922.

Of codefendant, no ground for new trial. **Walker**, 17 A. 322, 86 S. E. 735.

Of higher grade charged, resulted from verdict for lower grade, though judge refused to receive it. **Register**, 10 A. 623, 74 S. E. 429.

Act constituting two offenses, felony and misdemeanor, election to prosecute for the felony allowed. **Bone**, 121/147, 48 S. E. 986.

Affidavit "to the best of affiant's knowledge and belief," which has not been used, may be basis of indictment for perjury. **Herring**, 119/710, 714, 46 S. E. 876.

As basis of accusation in criminal court of Atlanta, made before commercial notary public. As basis of warrant by judge for arrest of accused, query. **Mitchell**, 126/84, 54 S. E. 931.

See catchword, **Accusation**.

Agent; when indictment, need not give name of agent in unlawful sale alleged to have been made by defendant "by himself and agents." *Harker*, 8 A. 93, 68 S. E. 650.

Alibi and mistaken identity, virtually same defense here; separate charge on alibi not required. *Glover*, 7 A. 628, 67 S. E. 687.

Not error to charge jury on alibi, where mistaken identity was defense relied on. *Clark*, 7 A. 609, 67 S. E. 697.

As defense; rule stated. *Hunter*, 136/103, 70 S. E. 643; *Fitzgerald*, 136/163, 71 S. E. 128; *Taylor*, 135/622, 70 S. E. 237.

Error in referring to homicide as a crime, when charging jury. *Phillips*, 131/426, 62 S. E. 239.

Being main defense, jury must be instructed thereon, even without request. *Duggan*, 3 A. 332, 59 S. E. 846. Instruction approved. *Smith*, 3 A. 803, 61 S. E. 737.

Burden of proof as to. *Jones*, 130/274, 60 S. E. 840; *Kirksey*, 11 A. 143, 146, 74 S. E. 902.

Burden of proof as to; and sufficiency of testimony to overcome proof of guilt. *Montford*, 144/583, 87 S. E. 797.

Burden of proof as to; proper charge to jury. *Pyles*, 12 A. 667, 78 S. E. 144.

Burden of proof of; and nature and effect of evidence. *Smith*, 3 A. 803, 61 S. E. 737.

Charge to jury on the subject. *Langston*, 23 A. 82, 97 S. E. 444. Not subject to criticisms presented. *Conklin*, 21 A. 399, 94 S. E. 600.

Charge on burden of proof as to, considered. *Eidson*, 21 A. 245, 94 S. E. 73.

Charge that the defendant "has offered some evidence of an alibi," was not harmful error. *Horton*, 21 A. 120, 93 S. E. 1012.

Charge on, not appropriate, but harmless. *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17. Failure to V. II—4.

charge on, in close case, error. *Moody*, 114/449, 40 S. E. 242.

Defense of, in murder case. *Knight*, 143/678, 85 S. E. 915.

Defense of, not set up by contradicting evidence as to presence of accused at another place than that of crime. *Williams*, 123/138, 51 S. E. 322.

Defense of, not sustained. *Bass*, 1 A. 729, 57 S. E. 1054. Newly discovered evidence of. *Sims*, 1 A. 777, 57 S. E. 1029.

Defense of, presented only by defendant's statement, jury need not be charged on, without request. *Gray*, 6 A. 432, 65 S. E. 191. Reasonable doubt as to. *Lowry*, 6 A. 543, 65 S. E. 353.

Erroneous charge as to "attempt" to prove. *Kimbrough*, 101/583, 29 S. E. 39.

Erroneous charge on, how corrected by judge. *Rawlins*, 124/46, 52 S. E. 1.

Error in not charging jury as to. *Hobbs*, 8 A. 54, 68 S. E. 515. Evidence not sufficiently clear and strong to require charge to jury on, without request. *Paulk*, 8 A. 704, 70 S. E. 50.

Error in not charging jury that if they had reasonable doubt whether the accused had established the alibi, they should give him the benefit of the doubt. *Callahan*, 14 A. 442, 81 S. E. 380.

Error in restricting consideration of, to presence of accused at single place. *Vincent*, 145/293, 89 S. E. 203.

Error in submitting issue where not involved. *Daniels*, 23 A. 762, 99 S. E. 312.

Evidence of, considered on question of guilt beyond reasonable doubt, as well as on distinct defense. *Lucas*, 110/756, 36 S. E. 87.

Evidence of, considered with other evidence, may raise reasonable doubt. *Shaw*, 102/660, 29 S. E. 477.

Evidence not sufficient to require charge on. *Throckmorton*, 23 A. 112, 97 S. E. 664; *Holliday*, 23 A. 400, 98 S. E. 386.

Evidence requiring charge to jury as to. *Gadlin*, 13 A. 660, 79 S. E. 751.

Burden of proof as to. Error in charge to jury as to what necessary to establish alibi. *Evans*, 13 A. 700, 79 S. E. 916.

Inaccurate instruction as to alibi, cured by other part of charge. *Mack*, 7 A. 97, 66 S. E. 282.

Inapplicable instructions as to, favorable to accused, no ground for new trial. *Gullatt*, 14 A. 54, 80 S. E. 340. Sufficiency of proof as to. *Goggans*, 14 A. 822, 82 S. E. 357.

Incomplete charge to jury as to, ground for new trial. *Moody*, 17 A. 121, 86 S. E. 285. Insufficient instructions as to. *Holland*, 17 A. 311, 86 S. E. 739. Omission to charge jury on, without request, not cause reversal, when. *Moore*, 17 A. 344, 86 S. E. 822.

Instruction as to burden of proof and amount of evidence, upheld. *Bone*, 102/387, 30 S. E. 845.

Instructions to jury as to, considered. *Harrison*, 20 A. 12, 92 S. E. 388; 95 S. E. 630. Evidence not requiring charge to jury as to. *Gibson*, 20 A. 75, 93 S. E. 48. Newly discovered evidence as to, as ground for new trial. *Carson*, 20 A. 82, 92 S. E. 549.

Insufficient proof as to. *Smith*, 6 A. 577, 65 S. E. 300.

In view of entire charge on alibi, an instruction that alibi must be established "to the satisfaction of the jury" was not error because of omission of the word "reasonable" before "satisfaction." *McDonald*, 21 A. 125, 94 S. E. 262.

Jury determines credibility of evidence as to. *Canida*, 130/15, 60 S. E. 104.

Newly discovered evidence as to, in conflict with that offered by accused on the trial, not such as to require new trial. *Johnson*, 127/102, 57 S. E. 353.

Newly discovered evidence as to, insufficient here. *Kennedy*, 9 A. 220, 70 S. E. 986.

Newly discovered evidence as to, not strictly cumulative, but unsatisfactory here. *Mitchell*, 6 A. 555, 558, 65 S. E. 326. Omission to charge jury on, without request, not cause reversal. *Smith*, 6 A. 577, 65 S. E. 300.

Newly discovered evidence, as to, requiring new trial. *Deason*, 11 A. 759, 76 S. E. 73.

No error in charging on assumption that jury might find against that defense, here. *Field*, 126/572, 55 S. E. 502.

Omission to charge as to, when not error. *Hardin*, 107/721, 33 S. E. 700.

Omission to charge jury on, without request, not cause reversal. *Jenkins*, 13 A. 82, 78 S. E. 828; *Couey*, 11 A. 415, 75 S. E. 445; *Solomon*, 10 A. 409, 73 S. E. 623.

Charge that defense rested in part on, was incorrect, but harmless. *Curry*, 13 A. 659, 79 S. E. 771.

Evidence not requiring charge on. *Shaw*, 10 A. 776, 74 S. E. 89; *Covey*, 11 A. 415, 75 S. E. 445; *Strickland*, 11 A. 417, 75 S. E. 491.

No error in charge on. *Dowdell*, 10 A. 835, 74 S. E. 443.

Proper charge as to, that it involved impossibility of presence of accused at the scene of the crime. *Field*, 126/574, 55 S. E. 502.

Proper instruction as to. *Cochran*, 113/726, 39 S. E. 332; *Thomas*, 18 A. 102, 88 S. E. 917; *White*, 18 A. 214, 89 S. E. 175; *Williamson*, 18 A. 753, 90 S. E. 485.

Proper instruction to jury on law of, covered question as to personal identity. *Carr*, 4 A. 332, 61 S. E. 293. Instruction approved. *Smith*, 4 A. 807, 61 S. E. 737.

Request to certify question of law as to, to Supreme Court, refused. *Middleton*, 7 A. 1, 66 S. E. 22. Burden of establishing alibi to "reasonable satisfaction" of jury; proper charge. *Ib.*

Set up by prisoner's statement only, without evidence, not charged on without special request. *Walker*, 118/757, 45 S. E. 608; *Murphy*, 118/780, 45 S. E. 609; *Brundage*, 14 A. 460, 81 S. E. 384; *Sheffield*, 15 A. 514, 83 S. E. 871.

Strong evidence of, may authorize new trial. *Fellows*, 114/233, 39 S. E. 885.

Two branches in law of; both essential. *Raysor*, 132/237, 63 S. E. 786.

"Where it was impossible for him to have committed the crime," a correct charge to jury. **Harris**, 120/167, 47 S. E. 520. Burden of proof as to. **Henderson**, 120/506, 48 S. E. 167.

Whether sufficiently proved, a jury question. **Prater**, 16 A. 297, 85 S. E. 204. Proper cross-examination of witnesses as to. **Stephens**, 16 A. 144, 84 S. E. 560.

Allegations, not denomination of offense, determine character of offense charged. **McKissick**, 11 A. 721, 76 S. E. 71; **Sneed**, 16 A. 351, 85 S. E. 354; **Lummas**, 17 A. 414, 87 S. E. 147; **Edwards**, 22 A. 796, 97 S. E. 205.

Setting forth the offense, sufficient, though it is not denominated. **Alexander**, 122/174, 50 S. E. 56.

Necessary and unnecessary, in indictment. **Brown**, 116/559, 42 S. E. 795; **O'Neil**, 116/840, 43 S. E. 248; **Kitchens**, 116/848, 43 S. E. 256.

Immaterial and unnecessary, when must be proved as laid. **Haupt**, 108/56, 34 S. E. 313, 75 Am. St. R. 19; **Tolbert**, 16 A. 311, 85 S. E. 267.

Unnecessary, rule as to proof necessary under. **Heard**, 113/449, 39 S. E. 118.

Not necessary, but when made must be proved (larceny in burglary). **Walker**, 5 A. 430, 63 S. E. 534. Reason for requiring proof of non-essential allegations. **Caswell**, 5 A. 487, 63 S. E. 566.

Unnecessary, when must be proved, and when need not be. **Hall**, 120/142, 47 S. E. 519; **Jordan**, 120/865, 48 S. E. 352; **Barlow**, 127/64, 56 S. E. 131.

Unnecessary, when not require proof. **Shrouder**, 121/615, 49 S. E. 702; **Seale**, 121/742, 49 S. E. 740; **Tigner**, 119/114, 45 S. E. 1001.

Every material allegation must be proved. **Ferguson**, 1 A. 841, 58 S. E. 57.

Reason for requiring proof of non-essential allegation. **Bone**, 11 A. 128, 74 S. E. 852.

Shooting "in car," allegation of, supported by proof of shooting on car,

from step. **Andrews**, 8 A. 700, 702, 70 S. E. 111.

Charge that an act intrinsically lawful was done unlawfully, without more, a mere conclusion. **Dukes**, 9 A. 537, 71 S. E. 921; **Roughlin**, 17 A. 205, 86 S. E. 452.

Date of misdemeanor, allegation of, not prevent proof of its commission at any other time within two years preceding the finding of the indictment. **Webb**, 13 A. 733, 80 S. E. 14.

Not too indefinite. Murder by stabbing. **Hall**, 133/177, 65 S. E. 400.

As to venue, sufficient here. **Eaves**, 113/754, 39 S. E. 318.

Insufficient in an accusation, may be sufficient in an indictment. **Barker**, 6 A. 443, 65 S. E. 57.

That ownership is unknown; evidence showing ownership, no fatal variance, when. **Ray**, 4 A. 67, 60 S. E. 816.

Rejected as surplusage. **Long**, 4 A. 571, 61 S. E. 1053; **Cashin**, 18 A. 88, 89, 88 S. E. 996; **Holland**, 11 A. 769, 76 S. E. 1004.

Too general and indefinite, treated as surplusage, where other allegations were sufficient. **Elsberry**, 12 A. 86, 76 S. E. 779.

That pistol was pointed at A and B, not sustained by proof of pointing at A and D. **Bone**, 11 A. 128, 74 S. E. 852.

That time of offense was subsequent to the finding, of the bill, demurrable; too late to raise question after verdict. **Spencer**, 123/133, 51 S. E. 294.

Alteration of indictment, effect of. **Allen**, 123/499, 51 S. E. 506.

Of indictment, not matter for demurrer. **Gunn**, 10 A. 819, 74 S. E. 312.

Alternative charge in accusation. **Oglesby**, 123/506, 51 S. E. 505.

Held bad on special demurrer. **Haley**, 124/216, 52 S. E. 159; **Henderson**, 113/1148, 39 S. E. 446.

Not made by using "or" in indictment here. **Whitaker**, 11 A. 208, 211, 75 S. E. 258.

That accused played and bet "for money, or other thing of value," bad. **Cooper**, 9 A. 877, 72 S. E. 436.

Amendment of accusation. **Progress Club**, 12 A. 175, 76 S. E. 1029; **Gilbert**, 17 A. 144, 86 S. E. 415; **Smith**, 17 A. 612, 87 S. E. 846; **Bishop**, 22 A. 789, 799, 97 S. E. 251; **Crawford**, 4 A. 789, 62 S. E. 501; **Jackson**, 4 A. 461, 61 S. E. 862.

When allowable; greater strictness of pleading as to, than as to indictment. **Barker**, 6 A. 443, 65 S. E. 57; **Johnson**, 7 A. 49, 66 S. E. 148.

Proper. **Williams**, 16 A. 34, 84 S. E. 494. Amendment relates to time of filing accusation. *Ib.*

Objection as to time of, too late. **Whipple**, 10 A. 214, 73 S. E. 27.

After plea of former jeopardy, not too late. **Cook**, 22 A. 789, 790, 97 S. E. 264.

Of accusation in city court, when allowable. Difference between accusation and indictment in this regard. **Goldsmith**, 2 A. 283, 58 S. E. 486.

Of indictment. **Williams**, 13 A. 84, 85, 78 S. E. 854.

Animal, description of, in indictment. **Adams**, 22 A. 786, 97 S. E. 201.

Description; no requirement to name owner or person in possession, in indictment for malicious killing of hog. **Stokes**, 14 A. 522, 81 S. E. 595.

Marking or branding, distinct offense from altering mark or brand; indictment charging marking by branding, "and by altering," etc., was for one offense. **Lawrence**, 10 A. 786, 74 S. E. 300.

Whether necessary to allege ownership, in indictment for marking; alleged as to, must be proved. **Lawrence**, 10 A. 786, 74 S. E. 300.

Announcement, without hearing from counsel, of what charge will be, error. **Wiggins**, 101/502, 29 S. E. 26.

Argument, additional time for. **Wilburn**, 141/150, 81 S. E. 444.

Discretion of court as to time of. **Cook**, 22 A. 771, 97 S. E. 264.

Against reduction of punishment for homicide; what allowable. **Lucas**, 146/315, 91 S. E. 72.

Allowing solicitor-general, in conclusion, to read from transcript of stenographer's notes of evidence, and to comment thereon, not cause new trial, when. **Thornton**, 107/683, 33 S. E. 673.

Erroneous or misleading, as, that prosecutor's motive was to collect debt, how corrected in charge to jury. **Rucker**, 114/13, 39 S. E. 902.

Improper and unfair, but not injurious, no cause for new trial. **Hoxie**, 114/19, 39 S. E. 944.

Improper, as to character of accused not put in issue, new trial for. **Butler**, 142/287, 82 S. E. 654.

Improper, by solicitor-general, instructions sufficient to counteract effect of. **Smalls**, 105/669, 31 S. E. 571; **Battle**, 105/703, 32 S. E. 160.

Improper, by solicitor-general, when no ground for new trial. **Dill**, 106/683, 32 S. E. 660; **Bowens**, 106/761, 32 S. E. 666.

Improper, and statement of solicitor-general, how corrected. **Kearney**, 101/803, 29 S. E. 127, 65 Am. St. R. 344.

Improper, conviction set aside because of. **Ivey**, 113/1062, 39 S. E. 423, 54 L. R. A. 959.

Improper, by solicitor-general, no cause for reversal, if no ruling made or invoked. **Bridges**, 110/246, 34 S. E. 1037; **Bird**, 142/597, 83 S. E. 238, Ann. Cas. 1916C, 205.

Improper, on failure of accused to make statement. **O'Dell**, 120/154, 47 S. E. 577; **Minor**, 120/490, 48 S. E. 198. Not improper to draw deductions. That these are illogical, unreasonable, or even absurd, is for reply. **Owens**, 120/210, 47 S. E. 545.

Improper, remedy for. **Wallace**, 126/749, 55 S. E. 1042.

Improper, where prosecuting attorney tells jury he believes the accused is guilty. **Broznack**, 109/516, 35 S. E. 123.

Inferences from evidence, what legitimate in. **Smalls**, 105/669, 31 S. E. 571.

In opening of case, solicitor-general should omit denunciatory language. **Thomas**, 144/298, 87 S. E. 8.

In reply to assertion of accused's good character by his counsel, held improper. *Smoot*, 146/77, 90 S. E. 715.

In reply to statement of counsel for accused, no error in allowing, in this case. *Price*, 137/71, 72 S. E. 908.

Latitude in drawing conclusions from evidence; and practice where counsel differ as to testimony. *Milam*, 108/29, 33 S. E. 818. Harsh but legitimate language. *Haupt*, 108/53, 34 S. E. 313, 75 Am. St. R. 19.

Objectionable remarks of solicitor-general, when no cause for new trial. *Robinson*, 109/506, 34 S. E. 1017.

Discretion of court in abridging. *Sparks*, 111/830, 35 S. E. 654.

Of counsel for accused, properly corrected by interruption of judge. *Jones*, 110/252, 34 S. E. 205.

Improper statements in, how corrected. *Rawlins*, 124/33, 52 S. E. 1; *Ellis*, 124/91, 52 S. E. 147; *Walker*, 124/98, 52 S. E. 319.

Of solicitor-general, objections to, were not cause for stopping, or for new trial. *Frank*, 141/246, 80 S. E. 1016.

On credibility of witness who turned State's evidence, when judge had no right to interrupt. *Parker*, 3 A. 21, 59 S. E. 204.

On evidence ruled admissible, right of. *Odom*, 102/608, 29 S. E. 427.

On failure of accused to introduce his young child as a witness, not legitimate. *Knox*, 112/373, 37 S. E. 416.

Opening and conclusion of, not obtained by accused unless he introduces no evidence. *Mize*, 135/292, 69 S. E. 173.

Out of evidence, as cause for new trial. *Hudson*, 101/521, 28 S. E. 1010.

Reading report of other case in; no abuse of discretion in refusing to allow. *Hanley*, 128/24, 57 S. E. 236; *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364.

Ruling as to extension of time for, when no cause for new trial. *Price*, 137/71, 72 S. E. 908.

Counsel may read law in, to what extent. Not allowable thus to introduce

facts to influence jury. *Cribb*, 118/316, 45 S. E. 396; *Jackson*, 118/782, 45 S. E. 604. Assertion of conclusion fairly inferable, not improper. *Sims*, 118/774, 45 S. E. 621. See *Wrightsville R. Co.*, 118/583, 45 S. E. 453. *Aliter*. *Graham*, 118/808, 45 S. E. 616.

When legitimate, on conduct of accused not constituting guilt of crime charged. *Belt*, 103/13, 29 S. E. 451.

When no invasion of constitutional rights in cutting off, after two hours and a half. *Lindsay*, 138/818, 76 S. E. 369.

Arraignment and plea, formality as to, considered as waived, if point not made until after verdict. *Waller*, 2 A. 636, 58 S. E. 1106.

Former; no defense in this State. *Gray*, 6 A. 430, 65 S. E. 191; *Hurst*, 11 A. 754, 76 S. E. 78.

Jointly with others, after election to sever, when no ground for new trial. *Rawlins*, 124/32, 52 S. E. 1.

Not made; effect. *Kincade*, 14 A. 545, 547, 81 S. E. 910. Arraignment waived by demurring to indictment. *Id.* 544.

Requirement as to, discussed; absent defendant can not waive it. *Wells*, 121/368, 49 S. E. 319.

Waiver of, by silence. *Brown*, 19 A. 619, 91 S. E. 939; *Perry*, 19 A. 619, 91 S. E. 939; *Hudson*, 117/704, 45 S. E. 66; *Harris*, 11 A. 137, 74 S. E. 895.

Waiver by not informing the court that it had not been waived; informing solicitor-general and running pen through printed form of waiver on indictment was not sufficient to negative waiver. *Thompson*, 20 A. 178, 92 S. E. 959; *Harris*, 11 A. 137, 74 S. E. 895.

Waiver of, on one trial, applies also to subsequent trial granted on defendant's motion. *Parker*, 17 A. 252, 87 S. E. 705.

What sufficient, in misdemeanor case. *Fears*, 125/739, 54 S. E. 667.

Without calling on accused to make objection to array, no denial of right to challenge. *Schumpert*, 9 A. 553, 71 S. E. 879.

Array need not be formally put on accused in misdemeanor case. **Fears**, 125/740, 54 S. E. 661.

Arrest of judgment, defective count in the indictment no ground for. Evidence not considered; record controls motion. **Sessions**, 3 A. 13, 59 S. E. 196.

For defect of substance in indictment. **Gilmore**, 118/299, 45 S. E. 226; **Sanders**, 118/329, 45 S. E. 365. Not where waiver entered. **Hollis**, 118/760, 45 S. E. 617; **Sanders**, 118/788, 45 S. E. 602.

For void indictment; no discharge on habeas corpus. **Hill**, 121/575, 50 S. E. 344. Indictment sufficient as against motion in. **Battle**, 121/575, 50 S. E. 342.

Indictment defective on special demurrer, when not ground for. **Adkins**, 103/5, 29 S. E. 432.

Motion for, distinguished from motion to set aside. **Lyons**, 7 A. 52, 66 S. E. 149.

Motion for, objecting merely to form of indictment, and not affecting the real merits of the offense charged, not sustained. **Williams**, 13 A. 85, 78 S. E. 854.

Not remedy for error in charge of court. **Spence**, 7 A. 825, 68 S. E. 443.

Not remedy in case of variance between accusation and prosecutor's affidavit, as to name of accused, when. **Johnson**, 7 A. 551, 67 S. E. 225.

Prosecutor on grand jury, not ground for. **Jones**, 103/552, 29 S. E. 423.

Question as to sufficiency of indictment should have been raised by demurrer, not motion in arrest. **Jones**, 19 A. 67, 90 S. E. 981.

Remedy by motion for, not exclude right to move for new trial because of evidence illegally admitted. **Hollingsworth**, 7 A. 16, 65 S. E. 1077.

Remedy where indictment shows offense barred, and no exception preventing bar. **Hollingsworth**, 7 A. 16, 65 S. E. 1077.

Remedy where verdict was void. **Ezard**, 11 A. 30, 74 S. E. 551.

When not remedy for defects in indictment. **Lanier**, 5 A. 472, 63 S. E.

536; **Badger**, 5 A. 477, 63 S. E. 532; **Gazaway**, 9 A. 194, 70 S. E. 978. Indictment with entries and verdict alone considered in passing on motion for. **Bird**, 9 A. 219, 70 S. E. 966.

When not remedy for variance between allegations and proof. **Seals**, 107/713, 33 S. E. 392.

When remedy. **Foss**, 15 A. 478, 83 S. E. 880; **Hunter**, 4 A. 580, 61 S. E. 1130. Not remedy for error in allowing separation of jury, or in refusing continuance. **Williams**, 4 A. 853, 62 S. E. 525.

When remedy of one convicted under void indictment. **McDonald**, 126/536, 55 S. E. 235; **McDonald**, 129/243, 58 S. E. 860, 12 Ann. Cas. 701.

For void (not merely defective) indictment. **Hill**, 122/573, 50 S. E. 344. Indictment sufficient as against motion to arrest. **Battle**, 122/575, 50 S. E. 342.

Where verdict too indefinite or uncertain. **Wells**, 116/87, 42 S. E. 390.

Motion for, or to set aside, must be predicated on defect apparent on face of record. **Regopoulos**, 116/596, 42 S. E. 1014; **Watson**, 116/607, 43 S. E. 32, 21 L. R. A. (N. S.) 1. No jurisdiction to entertain motion in vacation. **Chapman**, 116/598, 42 S. E. 999. Presumption that evidence lawfully authorized verdict. *Ib.* 607.

Refused, not proper ground of motion for new trial; exception too late, after 20 days from refusal, in criminal case. **Gary**, 7 A. 501, 67 S. E. 207.

Arson, description of house, sufficient, in indictment here. **Howard**, 109/137, 34 S. E. 330.

Articles taken from defendant's possession, introduced in evidence, and taken to jury-room for inspection; no error. **Union**, 7 A. 27, 31, 66 S. E. 24.

Assault; indictment demurrable, where allegation of assault was followed by explanatory details showing no actual assault. **Gober**, 7 A. 206, 66 S. E. 395.

Allegations sufficient to include assault. **Smith**, 126/545, 55 S. E. 475.

Relative size and strength, no error in refusal to submit issue as to, in ab-

sence of evidence. *Folds*, 23 A. 147, 97 S. E. 872.

Assault and battery, sufficiency of indictment for. *Badger*, 5 A. 477, 479, 63 S. E. 532; *Sims*, 118/761, 45 S. E. 621.

Assault to murder, when indictment for murder is sufficient basis for conviction of. *Smith*, 126/544, 55 S. E. 475.

Instrument or means used, sufficiency of indictment as to. *Snell*, 13 A. 158, 79 S. E. 71.

Indictment bad for not describing manner of assault or character of weapon. *Walker*, 124/440, 52 S. E. 738.

Assault to rape; indictment sufficient. Particular description of act showing intention, not needed. *Robinson*, 118/32, 44 S. E. 814.

Attempt to commit crime, indictment for, not alleging an overt act done towards commission of the attempt, insufficient. *Wilburn*, 22 A. 613, 97 S. E. 87.

To sell liquor; demurrable indictment. *Moss*, 6 A. 524, 65 S. E. 300.

Automobile, larceny of; description sufficient. *Carson*, 22 A. 551, 96 S. E. 500.

Indictment not alleging what person or what property was endangered by running of, demurrable. *Carter*, 12 A. 432, 78 S. E. 205.

Bailee may be described as owner of goods stolen, when. *Waters*, 15 A. 342, 83 S. E. 200; *Randolph*, 16 A. 329, 85 S. E. 258.

Bank insolvency, indictment for, sufficient. *Griffin*, 15 A. 520, 83 S. E. 891. Insufficient. *Youmans*, 7 A. 101, 66 S. E. 383.

Indictment of officer for, sufficient; meaning of "chartered bank," not include trust company, when. *Dunn*, 13 A. 314, 79 S. E. 170.

Bar, plea in, when good as to second conviction of misdemeanor in two years. *Reynolds*, 114/265, 40 S. E. 234.

Bastardy, indictment for being putative father, bad. *Hudson*, 104/723, 30 S. E. 947.

Indictment for; good as against demurrer. *McCalman*, 121/491, 49 S. E. 609.

Indictment for, must allege that accused is father, not the putative father. *Taylor*, 133/638, 66 S. E. 792.

No error in charge of court stating that defendant had been required to give bond in terms of the law. *Swint*, 8 A. 753, 70 S. E. 144.

Sufficiency of indictment for, as to penal sum in bond, and authority of magistrate. *Childers*, 3 A. 449, 60 S. E. 128. Material variance between allegations and nature of proof as to character of bond requires new trial. *Pinson*, 3 A. 664, 60 S. E. 329.

Bicycle, description of, in indictment for larceny, sufficient. *Adams*, 21 A. 152, 94 S. E. 82.

Bigamy; indictment substantially in language of statute, sufficient. *Oliver*, 7 A. 695, 67 S. E. 886. Indictment need not allege time and place of prior marriage. *Ib.*

Indictment need not negative dissolution of prior marriage by divorce. *Oliver*, 7 A. 695, 67 S. E. 886. Circumstantial evidence of prior marriage. *Ib.* 697.

Blackmail, by representing self to be officer, arrest, and threat to prosecute unless money paid. Indictment insufficient. *Jackson*, 118/125, 44 S. E. 833.

Indictment for, can not be waived by submitting to trial under accusation in city court. *Wright*, 16 A. 216, 84 S. E. 975.

Sufficient indictment for. *Chunn*, 125/789, 54 S. E. 751.

Indictment sufficient; conviction demanded by evidence. *Cook*, 22 A. 770, 97 S. E. 264.

Blank in indictment, effect of "the year nineteen hundred and —"). *Walker*, 12 A. 91, 76 S. E. 762.

For name of county, not filled, no ground for arrest of judgment, when. *Lambert*, 11 A. 149, 74 S. E. 858.

Bona fide claim of ownership, as defense to charge of larceny. *Patterson*, 122/588, 50 S. E. 489.

Of right, as defense, in prosecution for larceny; proper instructions to jury. *Brown*, 14 A. 505, 81 S. E. 590; *Musgrove*, 5 A. 467, 63 S. E. 538. In

trespass case. *Cooper*, 5 A. 697, 63 S. E. 719.

"Breach of the peace," definition of, omitted from charge of court, no error, in absence of request, here. *McAllister*, 7 A. 541, 67 S. E. 221.

Burglary, indictment for, alleging intent to steal, need not give description, value, or ownership of goods. *Boyd*, 4 A. 273, 61 S. E. 134.

Indictment charging defendant as accessory after fact, held sufficient as indictment for receiving stolen goods. *McKissick*, 11 A. 721, 76 S. E. 71.

Indictment sufficient. *Keenan*, 10 A. 792, 74 S. E. 297.

Indictment for, compared to indictment for breaking and entering railroad-car. *Berry*, 124/826, 53 S. E. 316.

Indictment for, may lay ownership in one having lawful possession as agent or bailee. *Bradley*, 2 A. 622, 58 S. E. 1064.

Indictment need not charge larceny; if alleged, it must be proved. *Walker*, 5 A. 430, 63 S. E. 534.

Description of stolen property in indictment: "35 pounds of midding meat," value, and name of owner, sufficient. *Shaw*, 10 A. 776, 74 S. E. 89.

Of outhouse, indictment sufficient. *Hutchins*, 3 A. 300, 59 S. E. 848.

Ownership of house, where lodger's room is burglarized, may be alleged in him, or in his landlord occupying the house as a dwelling. *Boyd*, 4 A. 273, 61 S. E. 134.

Business not registered; sufficiency of indictment and proof. *Dobbs*, 8 A. 731, 70 S. E. 101.

Buying vote, indictment for, sufficient; not duplicitous. *Lepinsky*, 7 A. 285, 66 S. E. 965. Immaterial that voter had not registered. *Ib.* Evidence sufficient to convict. *Ib.*

Certainty as to time, place, circumstances, etc., in indictment; requirement as to *Carter*, 12 A. 432, 433, 78 S. E. 205; *Burkes*, 7 A. 40, 65 S. E. 1091.

Requirement as to, with reference to contract of one charged with violation

of "labor-contract law." *Thorn*, 13 A. 10, 78 S. E. 853.

Charge pertinent, error to refuse, in close case, though principle covered in general charge. *Belt*, 103/13, 29 S. E. 451; *Taylor*, 105/847, 33 S. E. 190.

Admission by counsel that a certain principle of law applicable to the case is not applicable, whether sufficient as cause for not giving it in charge. *Griffin*, 113/282, 38 S. E. 844. See *Hill*, 147/650 and cit., 95 S. E. 213.

Erroneous, when no ground for new trial. *Lanier*, 106/368, 32 S. E. 335.

Without evidence to authorize it, error. *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426.

That State was not "bound" to go outside of the indictment, not error. *Buchanan*, 11 A. 756, 76 S. E. 73.

Reading indictment twice in, not error. *Quinn*, 22 A. 635, 97 S. E. 84.

Twice giving language of indictment did not unduly emphasize State's contentions. *Mulligan*, 18 A. 464, 89 S. E. 541.

Inaccuracy in, as to what was alleged in indictment, not misleading; not ground for new trial. *Cook*, 22 A. 781, 97 S. E. 264.

That jury are to decide as to materiality of allegations, error. *Holt*, 5 A. 184, 62 S. E. 992.

That "the second count is applicable to the facts," not prejudicial here. *Jones*, 18 A. 8, 89 S. E. 342.

Cheating and swindling, accusation describing offense as, instead of charging accused with being "a cheat and swindler," not quashed on that ground. *Crawford*, 4 A. 789, 62 S. E. 501.

Accusation insufficient as to representations. *Hammond*, 15 A. 471, 83 S. E. 860.

Accusation not sufficiently describing goods obtained (meat and "other groceries"). *Barker*, 6 A. 443, 65 S. E. 57. Stricter rule of pleading to accusation than to indictment. *Ib.*

Accusation sufficient as against demurrer. *Dent*, 16 A. 749, 86 S. E. 46.

Variance between allegation and proof

in description of mule. **Williams**, 16 A. 34, 84 S. E. 494.

Allegations sufficient as to loss. **Burns**, 20 A. 77, 92 S. E. 548.

Allegation that falsity of representations was not discoverable by reasonable diligence, not necessary here. **Crawford**, 4 A. 789, 796, 801, 62 S. E. 501.

Allegation that representations were "false and fraudulently made," with "intent to defraud," implies that the person making them knew they were false. **McLendon**, 16 A. 262, 85 S. E. 200.

Allegation that representations were fraudulent, a sufficient statement that they were made with intent to defraud. **Crawford**, 4 A. 789, 62 S. E. 501; **Isaacs**, 7 A. 799, 68 S. E. 338.

Accusation sufficiently specific. **Crawford**, 3 A. 789, 62 S. E. 501.

Allegations insufficient to show damage. **Albert**, 11 A. 93, 74 S. E. 714. Allegations as to transaction with member of firm did not show that firm was defrauded. *Ib.*

Allegation that the representations were made to a named firm composed of named persons, was not sufficiently definite as to the person or persons to whom made. **McLendon**, 16 A. 263, 85 S. E. 200.

By contracting to perform service; accusation under act of 1903, charging that accused fraudulently procured from prosecutor a stated sum, "or the value thereof," demurrable. **Oglesby**, 123/506, 51 S. E. 505.

By deceiving as to existence of lien; essential allegations of indictment. **Jacobs**, 4 A. 509, 61 S. E. 924.

Deceitful means and artful practices sufficiently set forth in indictment. **Whitaker**, 11 A. 209, 75 S. E. 258.

By violating labor-contract law. Indictment may embrace in one count various sums of money, procured at different times. **Young**, 4 A. 827, 62 S. E. 558.

By violation of labor-contract law. Indictment void, failing to allege legal contract, and that non-performance

and omission to repay was without good cause. **Mason**, 3 A. 348, 60 S. E. 4. Indictment good, as against demurrer. **Holt**, 5 A. 184, 62 S. E. 992.

Indictment alleging several false statements need not allege that loss resulted from each and all. **Whataker**, 11 A. 208, 212, 75 S. E. 258.

Indictment not sufficient as to alleged contract, demand and refusal to pay, etc. **Culuris**, 17 A. 373, 86 S. E. 1074.

Indictment held to be under § 719, not § 703 or § 713 of Penal Code. **Williams**, 13 A. 344, 79 S. E. 207.

Indictment for, sufficient, in case of false representation that there was no lien or incumbrance on mules traded; offense under § 703 of Penal Code. **Burns**, 20 A. 77, 92 S. E. 548.

Indictment defective in not specifying in what the "advances" procured by the accused consisted of; allegations sufficient as to intent to defraud. **Campbell**, 121/167, 48 S. E. 920.

Indictment charging false representations as to ownership of property need not allege who was owner. **McLendon**, 16 A. 262, 85 S. E. 200.

Indictment for, sufficient. **Isaacs**, 7 A. 799, 68 S. E. 338; **Sadler**, 9 A. 201, 70 S. E. 969.

Intent to defraud covered by allegations that representations were "falsely and fraudulently" made, and a designated person thereby cheated and defrauded. **Sadler**, 9 A. 201, 70 S. E. 969.

It must be charged that the person alleged to have been defrauded was deceived by the representations and thereby suffered loss. **McLendon**, 16 A. 262, 85 S. E. 200.

Nature and character of incumbrances should be set forth, where indictment alleges that the accused represented that certain property belonged to him and was unincumbered, when it was not unincumbered. **McLendon**, 16 A. 263, 85 S. E. 200.

Obtaining credit by false representations; allegation necessary that the credit was extended on the faith of the representations; allegation here was

sufficient. **McLendon**, 16 A. 263, 85 S. E. 200.

Person to whom representations were made should be alleged. **McLendon**, 16 A. 263, 85 S. E. 200.

Sufficiency of accusation in alleging contract. **Banks**, 124/15, 52 S. E. 74, 2 L. R. A. (N. S.) 1007; **Wilson**, 124/22, 52 S. E. 82; **Presley**, 124/446, 52 S. E. 750; **Watson**, 124/454, 52 S. E. 741.

Unnecessary to allege term of service expired before indictment. **Millinder**, 124/452, 52 S. E. 760. Arrest of judgment for defective accusation. **Watson**, 124/454, 52 S. E. 741.

"Choking," meaning of, in indictment charging killing by; when sufficient description of manner of killing. **Hicks**, 105/629, 31 S. E. 579.

Circuit from which county transferred, indictment drawn and grand jury sworn by solicitor-general of; validity of acts, when not open to collateral attack. **Godbee**, 141/515, 81 S. E. 876.

Clerical errors in indictment, when disregarded. **Kincade**, 14 A. 546, 547, 81 S. E. 910.

Cocaine, indictment for selling, sufficient. **Harker**, 8 A. 94, 68 S. E. 650.

Prescribing unlawfully; indictment sufficient as against demurrer. **Pinckney**, 9 A. 129, 70 S. E. 594.

Unlawful sale of, statutory exceptions should be negatived. **Dukes**, 9 A. 537, 71 S. E. 921.

Coercion, as defense to one aiding and abetting crime. **Pirkle**, 11 A. 98, 74 S. E. 709.

Of accused, circumstances showing. **Elder**, 143/363, 85 S. E. 97.

To commit crime, what necessary to relieve from responsibility. **Henderson**, 5 A. 495, 63 S. E. 535.

Color of party; instruction that the law is no respecter of persons, and difference in color of parties, should have no weight with the jury, not improper. **Summerford**, 121/390, 49 S. E. 268.

Comments on the phrase "with force and arms." **Morris**, 117/1, 43 S. E. 368.

Common-law offense and merely statutory offense, difference as between, as to

fullness of indictment. **Youmans**, 7 A. 101, 113, 66 S. E. 383.

Compliment: witness, judge should not, in hearing of jury. **Alexander**, 114/266, 40 S. E. 231.

Concealing felon; indictment fatally defective in not alleging conviction of principal offender, or that he could not be taken, etc. **Roberts**, 18 A. 529, 89 S. E. 1055.

Conjunctive allegation, where statute in disjunctive, good. **Brand**, 112/25, 37 S. E. 100.

Of weapons used, not open to demurrer. **Knight**, 148/40, 95 S. E. 679.

Of gaming with "cards, dice, and balls," not demurrable because the statute prohibits gaming with cards, dice, or balls. **Hubbard**, 123/17, 51 S. E. 11; **Simmons**, 17 A. 289, 86 S. E. 657. Construction of conjunctive allegation; allegation as to sale of cider and "other" drinks which would produce intoxication implies that the cider was intoxicating. **Lewis**, 17 A. 445, 87 S. E. 709.

Of sale of "alcoholic, spirituous, malt and intoxicating liquor," sustained by proving sale of one kind ("corn liquor"). **Wilburn**, 8 A. 28, 32, 68 S. E. 460.

Connection of accused with crime not shown, conviction not authorized. **Johnson**, 1 A. 129, 57 S. E. 934.

"Consensus tollit errorem," applied. **Threlkeld**, 128/660, 58 S. E. 49.

Consent of owner of premises to shooting by another thereon, no defense to prosecution under Penal Code, § 504. **Rumph**, 119/121, 45 S. E. 1002.

Of owner as affecting criminality in theft. **Edmondson**, 18 A. 233, 236, 89 S. E. 189.

Consideration of sale, sufficient allegation as to. **Taylor**, 126/557, 55 S. E. 474.

Consultation, reasonable time for, should be allowed on request of counsel. Refusal so to do, in murder trial, not reversible error, if verdict demanded by evidence. **Perryman**, 114/545, 40 S. E. 746. See **McArver**, 114/514, 40 S. E. 779.

Continuance or postponement of trial, to allow preparation, or because counsel unwell; refusal not error. *McLaughlin*, 141/133, 80 S. E. 631; *Godbee*, 141/515, 81 S. E. 876.

Facts entitling accused to. *Reliford*, 140/777, 79 S. E. 1128.

Because of absence of witnesses residing in another State, refusal of. *Minder*, 113/772, 39 S. E. 284.

Because of want of opportunity to prepare for defense, not error to refuse, here. *Jones*, 115/814, 42 S. E. 271.

Discretion as to, must be exercised reasonably, not arbitrarily. *Brown*, 120/145, 47 S. E. 543. Not abused. *Brady*, 120/181, 47 S. E. 535. No error in refusing. *Morgan*, 120/499, 48 S. E. 238; *Nail*, 142/595, 83 S. E. 226.

For absence of counsel, or of witness, what must be shown by motion for. *Wall*, 126/86, 54 S. E. 815.

For absence of counsel, leading counsel being present. *Johnson*, 108/771, 33 S. E. 641.

For absence of witness; counter-showing not good. *Kennedy*, 101/559, 28 S. E. 979.

For absence of witnesses, refused, if showing fatally defective. *Walker*, 118/84, 44 S. E. 850. If officer by ordinary diligence has failed to serve subpoena. *Smith*, 118/61, 44 S. E. 817. If prosecution admit truth of what witness would testify. *Watson*, 118/66, 44 S. E. 803. If two witnesses accessible who will testify to same point, though contradicted by three. *Salmons*, 118/763, 45 S. E. 611.

For absence of witness, no error in refusing. *Chancey*, 141/54, 80 S. E. 287; *Coleman*, 141/737, 82 S. E. 227.

For absence of witness, showing complete, should be granted. *Compton*, 108/747, 32 S. E. 843.

Ground for, must appear to have been legally verified. *Rutledge*, 108/69, 33 S. E. 812.

On ground of physical inability of accused; discretion in refusing, not

controlled. *McDaniel*, 103/268, 30 S. E. 29.

For physical disability of accused, no abuse of discretion in refusing. *Higgs*, 145/414, 99 S. E. 361.

Grounds not requiring. *Taylor*, 135/622, 70 S. E. 237.

Motion for, unsupported, alleging want of time to prepare, and public excitement. *Charlon*, 106/400, 32 S. E. 347.

Not granted for absent witnesses beyond jurisdiction, without their promise to attend. *Owens*, 110/292, 34 S. E. 1015.

Refused, for want of time to prepare, public excitement, physical debility, no abuse of discretion. *Charlon*, 106/400, 32 S. E. 347; *Stovall*, 106/443, 32 S. E. 586.

To procure testimony of general bad character, when no reversible error to refuse. *Perry*, 102/366, 30 S. E. 903.

"Contract," allegation as to, in indictment, presumed to mean written contract. *Brooks*, 12 A. 104, 76 S. E. 765.

"Contrary to the laws," etc., effect of these words in indictment. *Livingston*, 6 A. 209, 64 S. E. 709; *Lanier*, 5 A. 472, 63 S. E. 536; *Badger*, 5 A. 477, 63 S. E. 532.

Held to apply to the act charged, though grammatically they might appear to refer to something else. *Jones*, 115/814, 42 S. E. 271.

Control of liquor alleged, not demurrable for failure to set out how defendant controlled it. *Skipper*, 23 A. 155, 97 S. E. 866.

Copy of indictment not demanded, failure to furnish, not ground for setting aside verdict. *Fears*, 125/739, 740, 54 S. E. 661, 667.

Corporation, when imported by the word "Company," in indictment. *Gray*, 6 A. 428, 65 S. E. 191.

Imported by name used in indictment; incorporation not alleged, no proof of incorporation necessary. *Vaughn*, 17 A. 268, 86 S. E. 461. See *Livingston*, 17 A. 136, 86 S. E. 449.

Service of notice of indictment of, waived by voluntary appearance and demurrer. *Southern Ry. Co.*, 125/287, 54 S. E. 160, 114 Am. St. R. 203, 5 Ann. Cas. 411.

Proper allegation as to, in case against officer of local branch of fraternal order, for embezzlement. *Cook*, 8 A. 522, 70 S. E. 31.

Mode of prosecution, by indictment, not accusation in city court. *Progress Club*, 12 A. 174, 76 S. E. 1029; *Central Ga. Power Co.*, 12 A. 260, 77 S. E. 107. Service on corporation necessary. *Ib.*

Variance as to corporate name between indictment and proof, when not material. *Davis*, 105/808, 32 S. E. 158.

Proof allowed that "Tifton Knitting Mills," in indictment referred to a corporation. *George*, 123/504, 51 S. E. 504.

Allegation and proof of corporate existence, when surplusage. *Ager*, 2 A. 158, 58 S. E. 374.

Alleged, but not proved, in prosecution for embezzlement; conviction set aside. *Roberson*, 12 A. 102, 76 S. E. 752.

Cotton; indictment for buying seed-cotton at prohibited time without consent of landowner, good as against demurrer; not necessary to describe land or give name of owner. *Bazemore*, 121/619, 49 S. E. 701.

Sufficient description of, in indictment. *White*, 19 A. 230, 91 S. E. 280.

Counts of indictment, general verdict not specifying on which one of four, upheld if evidence supports any one of them. *Fry*, 141/789, 82 S. E. 135.

Error in charge of court as to one count, immaterial, where the accused was found guilty on another count only. *Quinn*, 22 A. 633, 97 S. E. 84.

Setting out different acts of same nature, election not required. *Walker*, 118/772, 45 S. E. 621.

Several counts, conviction supported on one or more of them not set aside because not warranted on another one. *Parham*, 3 A. 468, 60 S. E. 123.

Plural counts, no demurrer, conviction presumed to be based on good count, not defective one; rule and exception. *S. A. L. Ry.* 3 A. 4, 59 S. E. 199; *Sessions*, 3 A. 13, 59 S. E. 196; *Hayes*, 11 A. 372, 380, 75 S. E. 523.

Good and bad counts in indictment; effect of overruling demurrer, and of general verdict. *S. A. L. Ry.* 3 A. 1, 59 S. E. 199.

Indictment good in one count, on general demurrer, verdict presumed based on that count. *Cooper*, 101/784, 29 S. E. 22.

Indictment having two, evidence showing guilt on both, errors affecting but one are immaterial. *Anderson*, 2 A. 2, 58 S. E. 401.

Indictment in four, against two persons; conviction of one on two counts, authorized. *Easterling*, 12 A. 690, 78 S. E. 140.

Indictment in one count, as to sale and manufacture of liquor, sufficient. *McAdams*, 9 A. 166, 70 S. E. 893.

General verdict of guilty supported by proof of either. *Jones*, 12 A. 564, 77 S. E. 892.

Indictment in one count for different charges of perjury. *McLaren*, 4 A. 646, 62 S. E. 138. Indictment in one count charging running six freight-trains on Sundays, not demurrable as charging six offenses. *Westfall*, 4 A. 834, 62 S. E. 558.

Indictment in one count for violating statute in different ways, proper; proof of one of acts charged, sufficient to convict. *Camp*, 17 A. 297, 87 S. E. 159; *Hall*, 8 A. 747, 70 S. E. 211; *Barbour*, 21 A. 243, 94 S. E. 272; *Dunbar*, 21 A. 502, 94 S. E. 587.

Indictment in several; form of verdict; effect of general verdict. *Tooke*, 4 A. 495, 502, 61 S. E. 917; *O'Brien*, 22 A. 250, 95 S. E. 938.

Indictment in several; rule as to plurality of counts; any number of distinct misdemeanors of same nature may be included; violations of prohibition law of 1907 and of prior laws, included. *Tooke*, 4 A. 495, 502, 61 S. E. 917.

Instruction to jury that "the second count is applicable to the facts," not prejudicial here. *Jones*, 18 A. 8, 89 S. E. 342.

Indictment in two, charging different offenses which are separate transactions; general verdict of guilty set aside, where the evidence supports only one of them. *Morse*, 10 A. 61, 66, 72 S. E. 534.

Indictment in two, charging separate offenses; evidence irrelevant as to one, but material to the other, admitted. *Reddick*, 15 A. 437, 83 S. E. 675. One count for violation of statute in different ways, sustained by proof as to one of acts charged. *Bragg*, 15 A. 631, 84 S. E. 82.

Indictment in two; general verdict of guilty authorized by evidence sustaining either or both. *Howell*, 5 A. 185, 62 S. E. 1001; *Colquitt*, 6 A. 109, 64 S. E. 281.

Indictment in two (forgery and uttering the forged paper); proper charge to jury as to form of verdict. *Sellers*, 12 A. 687, 78 S. E. 196. One count defective; general verdict of guilty applied to good count, when. *Rothschild*, 12 A. 728, 78 S. E. 201.

Rules as to plurality of; form of verdict. *Hall*, 7 A. 747, 70 S. E. 211.

Presumption that verdict is based on good count; general rule. *Sutton*, 122/158, 160, 50 S. E. 60.

Indictment with bad count and good count; court may strike the bad, without quashing the whole. *Martin*, 10 A. 795, 74 S. E. 304.

Indictment with different counts, general verdict construed. *Moran*, 125/35, 53 S. E. 806.

Indictment with mixed count, subject to special demurrer, not void. *Williams*, 119/181, 45 S. E. 989.

Indictment with two, charging defendant as principal and as accessory before the fact in burglary; State not required to elect between counts. *Braxley*, 17 A. 197, 86 S. E. 425.

Double, count is not, because it charges doing of act in several of the ways prohibited. *Cody*, 118/784, 45 S.

E. 622; *Bishop*, 118/799, 45 S. E. 614. Criticism of allowing indefiniteness in pleading. *Brown*, 8 A. 692, 70 S. E. 40.

Crop, unlawful sale of; indictment sufficiently specific. *Bell*, 14 A. 425, 81 S. E. 253.

Cropper is without title or possession of growing crop before settlement with landlord; indictment for attempt to steal crop should allege ownership in landlord. *Betts*, 6 A. 773, 65 S. E. 841.

Cutting or removing timber, etc., from unenclosed land; indictment should name owner. *Brown*, 16 A. 268, 85 S. E. 262.

Date need not be alleged, when. *Hollingsworth*, 7 A. 16, 65 S. E. 1077; *Carswell*, 7 A. 199, 66 S. E. 488.

Not essential in indictment for murder. *Black*, 14 A. 534, 81 S. E. 588.

Allegation necessary as to. *Norris*, 15 A. 511, 83 S. E. 866.

Sufficiency of allegation as to. *Newsome*, 2 A. 392, 58 S. E. 672. Harmless error in charge. *Harris*, 2 A. 406, 58 S. E. 669. Insufficient proof. *Tharpe*, 2 A. 649, 58 S. E. 1070. Sufficient proof. *Fountain*, 2 A. 717, 58 S. E. 1129.

Day and month proved, but not year when offense committed, new trial granted. *Givens*, 105/843, 32 S. E. 341.

Proof not restricted to date alleged. *Taylor*, 5 A. 237, 62 S. E. 1048; *Haupt*, 108/60, 33 S. E. 829.

Proof of date intended to be alleged in, when allowed. *Walker*, 12 A. 92, 96, 76 S. E. 762.

Any within period of limitation may be proved, though different from that charged. *Cole*, 120/485, 48 S. E. 156.

Whether before or after indictment, not shown, conviction set aside. *Bragg*, 126/442, 55 S. E. 232.

See Criminal Law, 1, catchwords, Limitation, Time of offense.

Declaring dividend unlawfully, indictment for, sufficient. *Cabaniss*, 8 A. 129, 68 S. E. 849.

Defects not affecting merits of offense charged in indictment, not sufficient to

arrest judgment. *Colwell*, 17 A. 750, 88 S. E. 410.

Waived by failing to demur. *Draper*, 6 A. 12, 64 S. E. 117.

Not reached by motion to arrest judgment, when. *Gazaway*, 9 A. 194, 70 S. E. 978; *Adkins*, 103/5, 29 S. E. 432.

Matter for demurrer, not cause for arresting judgment, here. *Martin*, 115/258, 41 S. E. 576.

As ground in arrest of judgment: *Simmons*, 106/358, 32 S. E. 339; *Hunter*, 4 A. 580, 61 S. E. 1130.

In not sufficiently describing stolen property, should be taken advantage of by written demurrer before pleading to the merits. *King*, 117/39, 43 S. E. 426.

Not aided by evidence, nor by verdict, when. *O'Brien*, 109/52, 35 S. E. 112.

No ground for new trial. *Foss*, 15 A. 478, 83 S. E. 880.

No ground for new trial; but for arrest of judgment, if matter affect merits. Matters of form must be objected to before trial. *Scandrett*, 124/141, 52 S. E. 160.

Defense and preparation for trial, right of accused to facilities for. *Brooks*, 3 A. 458, 60 S. E. 211.

Subterfuge to cover an illegal act. *Smith*, 127/44, 56 S. E. 73; *Gaskins*, 127/51, 55 S. E. 1045.

Non-reliance on theory of, raised by evidence, should be called to court's attention. *Patterson*, 124/408, 52 S. E. 534.

Of another, charge of court as to, considered. *Winder*, 18 A. 67, 88 S. E. 1003.

Of brother, as justification for shooting. *Mosley*, 11 A. 4, 7, 74 S. E. 569; Of brother, law as to, not applicable to assault here. *Nobles*, 12 A. 355, 77 S. E. 184; *Taylor*, 13 A. 689, 79 S. E. 862; *Swain*, 15 A. 445, 83 S. E. 642; *Sheffield*, 16 A. 287, 85 S. E. 253.

Of exemption, to be shown on trial of charge; not by habeas corpus. *Stephens*, 120/220, 47 S. E. 498.

Of home, by homicide. *Rossi*, 7 A. 732, 738, 68 S. E. 56.

Of self, family, or property, does not include punishing the offender. *Cole*, 2 A. 736, 59 S. E. 24.

Of sister's reputation, right of. *Farmer*, 7 A. 688, 67 S. E. 834. Of wife's virtue. *Rossi*, 7 A. 732, 68 S. E. 56.

Of sister's reputation, by killing, not justifiable nor manslaughter. *Renfro*, 8 A. 676, 70 S. E. 70.

Reasonable time for preparation of. *Nick*, 128/576, 58 S. E. 48.

Confused in charge of court, new trial required. *Pryer*, 128/28, 57 S. E. 93.

To felony, preparation of, appointed attorney entitled to reasonable time for. *Hunt*, 102/569, 27 S. E. 670.

Of another by homicide. *Gillis*, 8 A. 696, 70 S. E. 53.

Definiteness in indictment, rule as to. *Baker*, 19 A. 85, 90 S. E. 983.

"Defrauded;" loss implied from allegation that prosecutor was "cheated and defrauded." *Cheek*, 14 A. 536, 81 S. E. 586.

Delusion as a defense. *Taylor*, 105/777, 31 S. E. 764.

Though accompanied with ability to distinguish right from wrong. *Flanagan*, 103/619, 30 S. E. 550.

Demand for indictment by grand jury; when too late, in city court. *Grier*, 14 A. 558, 81 S. E. 809.

Made orally by counsel, insufficient; it should be in writing, signed by the accused. *Shivers*, 123/538, 51 S. E. 596.

Right to, need not be provided for in act establishing court for misdemeanor cases. *Welborne*, 115/565, 41 S. E. 999; *Daughtry*, 115/820, 42 S. E. 248.

No constitutional guaranty of right in misdemeanors. *Fleming*, 11 A. 581, 75 S. E. 914; *Green*, 119/120, 45 S. E. 990; *Gordon*, 102/673, 29 S. E. 444; *Hopkins*, 5 A. 700, 63 S. E. 719.

No right to make, in criminal court of Atlanta, for misdemeanor. *Mitchell*, 126/84, 54 S. E. 931.

Not constitutional right, in city court, where not given in act creating same. *Turner*, 114/421, 40 S. E. 308.

Right may be cut off, as to trial in city court. *Moore*, 124/30, 52 S. E. 81.

When accused may make, as condition of trial in city court. *Hopkins*, 5 A. 700, 63 S. E. 719.

Demand for trial not entered, though solicitor notified, court should allow entry nunc pro tunc. *Graham*, 1 A. 682, 57 S. E. 1055; *Thornton*, 7 A. 754, 67 S. E. 1055; *Collins*, 7 A. 653, 67 S. E. 847.

As affected by transfer of case from superior to county court. *Brock*, 18 A. 175, 89 S. E. 156.

Benefit of, not lost by transfer of indictment to city court. *Gordon*, 106/121, 32 S. E. 32.

Continues operative, without motion for discharge, at next term after conviction and grant of new trial. *Gordon*, 106/121, 32 S. E. 32.

Discharge by failure to comply with. *Mager*, 21 A. 139, 94 S. E. 82; *Graham*, 1 A. 682, 57 S. E. 1055; *Williamson*, 1 A. 657, 57 S. E. 1079; *Gordon*, 106/121, 32 S. E. 32.

Discharge of accused, no error in refusing (two JJ. dissenting). Demand for trial, but no indictment. *Shirah*, 148/263, 96 S. E. 337.

Discharge by failure to comply with, effected without order discharging. *Collins*, 7 A. 653, 67 S. E. 847; *Thornton*, 7 A. 752, 67 S. E. 1055; *Flagg*, 11 A. 37, 74 S. E. 562; *Bishop*, 11 A. 297, 75 S. E. 165. Rights under demand not waived by silence. *Flagg*, 11 A. 37, 74 S. E. 562.

Error in refusing order for discharge. *Flagg*, 11 A. 37, 74 S. E. 562. Demand continues operative at next term after conviction and grant of new trial. *Bishop*, 11 A. 297, 75 S. E. 165.

Exhausted where defendant was tried at second term, though afterwards granted a new trial. *Clay*, 4 A. 142, 60 S. E. 1028. Demand not applied to all indictments relating to the same transaction. *Ib.* 145.

Made in superior court after transfer of case to city court, unavailing. *Hunley*, 105/636, 31 S. E. 543.

"Next succeeding term," after demand, as to case transferred from superior court to city court, not term of city court concurrent with that at which demand was made in superior court. *Castleberry*, 11 A. 757, 76 S. E. 74.

Order allowing, a nullity, where no accusation or indictment preferred. *Williamson*, 1 A. 657, 57 S. E. 1079.

Rights under. *Dublin*, 126/581, 55 S. E. 487; *Nix*, 5 A. 835, 63 S. E. 926.

Rights under demand, not waived by remaining silent and not making further effort to obtain trial. *Mager*, 21 A. 139, 94 S. E. 82; *Thornton*, 7 A. 752, 67 S. E. 1055. How waived by conduct. *Ib.* 753.

Right to discharge, not prejudiced by fact that court, before dismissing juries for the term, inquired if there was any reason why they should not be dismissed. *Stripland*, 115/581, 41 S. E. 987.

"Term," in code provision as to, means regular term and does not apply to a special term. *Stripland*, 115/578, 41 S. E. 987.

Trial resulting in mistrial, no compliance with demand. *Mager*, 21 A. 139, 94 S. E. 82; *Collins*, 7 A. 654, 67 S. E. 752.

Waived by voluntary absence from court, not by absence caused by confinement in chain-gang. *Flagg*, 11 A. 37, 74 S. E. 562.

Waiver by voluntary absence, not shown here. *Mager*, 21 A. 139, 94 S. E. 82.

Writ of error premature, as to refusal to allow demand entered; order refusing was not final judgment. *Bishop*, 11 A. 296, 75 S. E. 165; *Sharpe*, 10 A. 212, 73 S. E. 33; *Maples*, 10 A. 786, 74 S. E. 89.

Demurrer, exception to overruling of, is direct; not a ground for new trial. *Long*, 118/319, 45 S. E. 416.

General, and special, to indictment. *Gilmore*, 118/299, 45 S. E. 226.

General, error in overruling, rendered subsequent proceeding nugatory. *Dukes*, 9 A. 537, 71 S. E. 921. Rule

for testing sufficiency of indictment to withstand such a demurrer. *Ib.*

To accusation, when not sufficient to raise particular question on. *Banks*, 124/15, 52 S. E. 74, 2 L. R. A. (N. S.) 1007. When sustainable. *Wilson*, 124/22, 52 S. E. 82.

To indictment, estoppel by judgment on. *Matthews*, 125/248, 54 S. E. 192.

To indictment must be written. *Sims*, 110/290, 34 S. E. 1020.

To accusation, overruled, no ground for new trial. *Cleveland*, 109/265, 34 S. E. 572.

To indictment, overruled, no ground for new trial. *Heard*, 113/444, 39 S. E. 118; *Veal*, 116/589, 42 S. E. 705; *Taylor*, 105/847, 33 S. E. 190; *Wheeler*, 4 A. 325, 61 S. E. 409; *Mack*, 10 A. 835, 74 S. E. 444; *Sconyers*, 6 A. 804, 65 S. E. 814; *McCarty*, 23 A. 79, 97 S. E. 446.

Defects in, or invalidity of indictment or accusation, reached by demurrer, or by motion to arrest judgment; not by motion for new trial. *Rucker*, 114/13, 39 S. E. 902; *Boswell*, 114/40, 39 S. E. 897; *Griffin*, 114/67, 39 S. E. 913; *Southern Express Co.*, 114/226, 39 S. E. 899.

To indictment, should be strictly construed against pleader. *Green*, 109/540, 35 S. E. 97.

Must be specific. *Rucker*, 114/13, 39 S. E. 902; *Boswell*, 114/40, 39 S. E. 897; *Griffin*, 114/67, 39 S. E. 913; *Hancock*, 114/439, 40 S. E. 317.

To indictment because "vague and uncertain, and indefinite," not sustained where indictment good in substance. Demurrer should be more specific. *Jones*, 115/814, 42 S. E. 271.

Indictment stating offense substantially in terms of Penal Code, and so plainly that its nature may be easily understood by jury, good, as against general demurrer. *Robbins*, 119/570, 46 S. E. 834.

Indictment specially demurrable may be unobjectionable after conviction. *Melvin*, 120/490, 491, 48 S. E. 198.

General, overruled if one good count. Overruling demurrer to bad

count vitiates general verdict of guilty. *Sutton*, 122/158, 50 S. E. 60.

Indictment subject to, not helped by confining proof to one part of allegation. *Haley*, 124/217, 52 S. E. 159.

For not so describing means used as to put accused on notice. *Walker*, 124/440, 52 S. E. 738.

For duplicity in charging separate offenses in one count, not sustained. *Johnson*, 125/243, 54 S. E. 184.

Indictment not subject to, for omission, from second count, of words in statutory form. *Braxley*, 143/658, 85 S. E. 888.

Indictment not subject to. Citizenship of grand jurors in the county. Date of death of person slain. *Reed*, 148/18, 95 S. E. 692.

Indictment under statute attacked as unconstitutional, demurrer not sufficiently specific to raise question as to violation of designated provision. *Tooke*, 4 A. 495, 61 S. E. 917.

Indictment alleging act constituting offense, but giving explanatory details not showing that offense, demurrable. *Gober*, 7 A. 206, 66 S. E. 395.

Verbal absurdities, not render indictment subject to, when. *Mixon*, 7 A. 806, 68 S. E. 315.

Indictment subject to, when accused can safely admit the truth of its allegations. *Roughlin*, 17 A. 205, 86 S. E. 452.

As to improper joinder of offenses, was fatally defective in not indicating what were the offenses. *Gatlin*, 18 A. 9, 89 S. E. 345; *Field*, 126/571, 55 S. E. 502.

To indictment as a whole, not good, where one count was good. *Thompson*, 18 A. 488, 89 S. E. 607.

Question as to sufficiency of indictment should have been raised by, not motion in arrest of judgment. *Jones*, 19 A. 67, 90 S. E. 981.

To abandoned count, not considered. *Gatlin*, 18 A. 9, 89 S. E. 345. Error in overruling special demurrer to allegation, harmless, in view of abandonment of that allegation, no evidence

being offered in its support. **Moye**, 19 A. 440, 441, 91 S. E. 941.

Not brought to attention of court until after arraignment and after a juror had qualified on voir dire, was properly overruled. **Chambers**, 22 A. 748, 752, 753, 97 S. E. 256.

Accused entitled to indictment perfect in form as well as substance, if he call for it by timely special demurrer. **Lockhart**, 116/558, 42 S. E. 787.

Description, "nine dollars in money of the value of nine dollars," when sufficient. **Frederick**, 127/35, 55 S. E. 1044; **Cannon**, 125/785, 54 S. E. 692.

Not sufficient, "all the cotton and cottonseed grown on three acres of cotton planted on Mrs. Johnson's farm." **Miller**, 18 A. 487, 89 S. E. 607.

Of stolen property (cow), sufficient. **Gibson**, 7 A. 692, 67 S. E. 838; **Wheeler**, 18 A. 15, 88 S. E. 712.

Of farm, under "labor contract law," too indefinite ("the farm of W. J. Gresham, to wit, the farm on which said W. J. Gresham resided in Fairplay district, G. M., said [Morgan] county"). **Hurt**, 18 A. 144, 88 S. E. 21.

Of crime without giving its name, sufficient, in indictment. **Lipham**, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495. Of money stolen, what sufficient. **Cannon**, 125/785, 54 S. E. 692.

Of goods, indictment wanting in. **Brown**, 116/559, 42 S. E. 795.

Of horse, in indictment, what sufficient. **Teal**, 119/103, 45 S. E. 964.

Of forged paper. **Haupt**, 108/53, 34 S. E. 183, 75 Am. St. R. 19.

Of land, sufficiency of. **Williams**, 2 A. 629, 58 S. E. 1071, 1072. Money. **McDonald**, 2 A. 633, 58 S. E. 1067; **Baker**, 19 A. 85, 90 S. E. 983.

Of land, too indefinite. **Solomon**, 14 A. 115, 80 S. E. 215; **Morrow**, 17 A. 116, 86 S. E. 280; **Heard**, 4 A. 572, 61 S. E. 1055. Not too indefinite; former cases distinguished. **Lewis**, 15 A. 405, 83 S. E. 439. See **Mitchell**, 15 A. 804, 84 S. E. 205.

Of mortgaged property (crops), too indefinite to be basis of prosecution.

V. II—5.

Wyatt, 16 A. 817, 81 S. E. 802. Material variance between description in mortgage and description in accusation. **lb.**

Of offense as "misdemeanor," in affidavit on which accusation based, sufficient. **Surrels**, 113/715, 39 S. E. 299.

Of offense; effect of using "misdemeanor" for. **Mason**, 3 A. 353, 60 S. E. 4.

Of offense following general charge, and negating precedent averment, effect of. **Woodson**, 114/844, 40 S. E. 1013.

Of offense, in affidavit and warrant, when sufficient. **Pye**, 9 A. 398, 71 S. E. 594.

Of offense, in indictment; allegations, not denomination of offense, determine what offense is charged. **McKissick**, 11 A. 721, 76 S. E. 71.

Of property, difference in, when explainable by parol. **Rucker**, 114/13, 39 S. E. 902. Evidence more minute than indictment, admissible. **Gibson**, 114/34, 39 S. E. 948. Insufficient; "a lot of cord wood." **Walthour**, 114/75, 39 S. E. 872. Demurrer for want of full and accurate description of horse, in an indictment for larceny, presents no question for decision. **Tucker**, 114/61, 39 S. E. 926. Weight of cotton stolen. **Green**, 114/918, 41 S. E. 55.

Of property in indictment, sufficient, though containing technical terms requiring explanation by expert evidence. **Wrenn**, 12 A. 694, 78 S. E. 202.

Sufficiency of, in burglary and larceny. **Hutchins**, 3 A. 300, 59 S. E. 848; **Ayers**, 3 A. 305, 59 S. E. 924; Forgery. **McLean**, 3 A. 660, 60 S. E. 332.

Unnecessarily minute, of necessary fact, must be proved; not so of unnecessary fact. **Hall**, 120/142, 47 S. E. 519. When too general in allegation of stolen property. **Melvin**, 120/490, 48 S. E. 198. Aliter. **Ector**, 120/545, 48 S. E. 315; **Bone**, 120/866, 48 S. E. 356.

Unnecessarily minute proof must correspond, when. **McLendon**, 121/158, 48 S. E. 902.

In indictment, when must be proved; and effect of variance as to. **Moore**, 13 A. 16, 78 S. E. 772; **Williams**, 13 A. 338, 79 S. E. 207. Requirements as to certainty in description of offense. **Snell**, 13 A. 163, 79 S. E. 71.

Words of, in statute, as to act, not intention, when may be omitted from indictment. **Gilmore**, 118/300, 45 S. E. 226.

Words of, in indictment for false swearing, when proof must correspond to. **Thompson**, 118/332, 45 S. E. 410.

Of manner of killing, when sufficient. **Hicks**, 105/628, 31 S. E. 579.

When must be proved as laid. **Haupt**, 108/53, 34 S. E. 183, 75 Am. St. R. 19; **Kidd**, 101/529, 28 S. E. 990.

When not to be rejected as surplusage. **Woodson**, 114/847, 40 S. E. 1013.

Of animal. **Adams**, 22 A. 786, 97 S. E. 201.

Of stolen hog, sufficient here. **Harvey**, 121/590, 49 S. E. 674.

Of animal's sex, when not necessary. **Burch**, 4 A. 384, 61 S. E. 503.

Of animal; whether variance in proof. **Paulk**, 5 A. 573, 63 S. E. 659.

Of militia district by colloquial name, instead of by number, sufficient here. **Norton**, 5 A. 587, 63 S. E. 662.

Whether sufficient, as to goods obtained; meat "and other" groceries. **Barker**, 6 A. 443, 65 S. E. 57.

Of place of offense, when required. **Burkes**, 7 A. 39, 65 S. E. 1091.

Of place (farm) not too indefinite. **Ashley**, 22 A. 626, 97 S. E. 82.

Of offense in language of code, and identifying the transaction, sufficient, here. **Dean**, 9 A. 303, 304, 71 S. E. 597.

Of stolen seed cotton, insufficient. **Bright**, 10 A. 17, 72 S. E. 519.

Of offense in language of code, when sufficient; distinction between indictment for statutory offense and indictment for common-law offense. **Griffin**, 15 A. 522, 83 S. E. 891.

Of cow as "blue and white speckled," meaning of "blue," as applied to cow. **Graham**, 16 A. 225, 226, 84 S. E. 981.

Of bales of cotton, sufficient. **White**, 19 A. 230, 91 S. E. 280.

Of hogs, sufficient: "one black barrow hog," "one dark red or suttie sow hog," of stated values, the property of, etc. **Geiger**, 21 A. 75, 93 S. E. 1027. See **Garrett**, 21 A. 801, 95 S. E. 301.

Of bicycle, by color, trade-mark, value, and allegation as to owner, sufficient. **Adams**, 21 A. 152, 94 S. E. 82.

Sufficient: "One five-passenger Ford automobile of the value of \$400, the property of" a named person. **Carson**, 22 A. 551, 97 S. E. 202. Cf. **Gamble**, 22 A. 608, 96 S. E. 705.

Of stolen property, whether sufficient. **Gibson**, 13 A. 67, 78 S. E. 829. Requirements as to certainty in description of offense, discussed. **Snell**, 13 A. 163, 79 S. E. 71.

Of stolen property; rule as to when sufficient. **Carson**, 22 A. 551, 97 S. E. 202; **Adams**, 21 A. 152, 94 S. E. 82.

Desisting on account of repentance, or from fear of apprehension, issue as to, for jury. **Weaver**, 116/550, 42 S. E. 745.

Different offenses, sufficiency of indictment charging. **Williams**, 107/695, 33 S. E. 641.

Direct verdict of not guilty, no error here to refuse to. Power of court to, discussed. **Williams**, 105/814, 32 S. E. 129, 70 Am. St. R. 82.

Discharge of other person in custody and charged with same crime, but not indicted, should not be asked for by solicitor in presence of jury trying the accused. **Hunter**, 133/79, 65 S. E. 154.

Disjunctive allegation in indictment, when bad. **Eaves**, 113/756, 39 S. E. 318. Word, "or," not used disjunctively here. **Whitaker**, 11 A. 208, 211, 75 S. E. 258.

Disparity in physical strength of parties to rencounter. **Alexander**, 118/26, 44 S. E. 851.

Disqualification of grand jurors to indict, or of solicitor-general to advise as to indictment; proper mode of raising question as to. **Stapleton**, 19 A. 36, 90 S. E. 1029.

Disturbing congregation assembled for divine service, indictment sufficient.

- Misconduct during intermission of service at an arbor near church named in the indictment, making out offense. **Minter**, 104/744, 30 S. E. 989.
- Disturbing school**; sufficiency of indictment; "assemblage" includes visitors; allegations construed as meaning school in session, not a meeting at school-house for other than school purposes. **Gazaway**, 9 A. 195, 70 S. E. 978.
- Accusation practically in terms of code, sufficient as to. **Manning**, 16 A. 654, 85 S. E. 930.
- Sufficient indictment for. **Minter**, 104/749, 30 S. E. 989.
- Doubt of guilt**, expressed by judge trying case, no reason for reviewing court to set aside conviction. **Ward**, 12 A. 481, 77 S. E. 649.
- Duel**; right of self-defense, where party abandoning intent to fight is attacked. **Bundrick**, 125/757, 54 S. E. 683.
- Duplicity in indictment**. **Lepinsky**, 7 A. 287, 66 S. E. 965; **Lawrence**, 10 A. 786, 788, 74 S. E. 300.
- Count charging one offense, committed in several ways, not bad for. **Cody**, 118/784, 45 S. E. 622.
- Duress**, as defense; character for violence, as tending to show. **McLeod**, 128/17, 57 S. E. 83.
- Causing participation in robbery; defense not sustained. **Pirkle**, 11 A. 98, 74 S. E. 709.
- No evidence warranting a charge on. **Rawlins**, 124/47, 52 S. E. 1. As defense for homicide. **Patterson**, 124/410, 52 S. E. 534.
- When relieves from responsibility for crime. **Henderson**, 5 A. 495, 63 S. E. 535.
- Dynamite** or other explosive, offense of attempting to injure house, etc., with (Penal Code of 1910, § 787), cannot be joined in indictment with offense of having possession of dynamite, explosive, or implement, intended to be used in crime (Act of 1910). **Belcher**, 19 A. 439, 91 S. E. 879.
- Effects of crime**, charge of court as to, considered. **Butler**, 14 A. 449, 81 S. E. 370.
- Election** between counts of indictment, when required of State. **Braxley**, 17 A. 197, 86 S. E. 425.
- Between counts of duplicitous indictment may be required. **Thompson**, 18 A. 488, 89 S. E. 607.
- By State as to which codefendant should be tried first; withdrawal of election. **Dixon**, 12 A. 17, 76 S. E. 794.
- Of count, for trial, when not required. **Walker**, 118/772, 45 S. E. 621; **Cody**, 118/784, 45 S. E. 622.
- Of counts on trial for adultery, etc., when not required. **Sutton**, 124/815, 53 S. E. 381. Rule as to requiring election. *Ib.* 816.
- Admission of innocence, on one count of indictment, by electing to try accused on another count. **Sessions**, 3 A. 13, 59 S. E. 196.
- Election managers** swearing falsely; sufficient indictment. **Norton**, 5 A. 586, 63 S. E. 662; **Phillips**, 5 A. 597, 63 S. E. 667. Wilfully failing to count votes publicly, a misdemeanor; meaning of "publicly." **Norton**, 5 A. 596, 63 S. E. 662.
- Elector's exemption from arrest**; no error in giving § 890 of Penal Code in charge to jury, without definition of "breach of the peace." **McAllister**, 7 A. 541, 67 S. E. 221.
- Embezzlement**, indictment for, good as against general demurrer. **Jones**, 115/815, 42 S. E. 271; **Cason**, 16 A. 820, 86 S. E. 644.
- Indictment not demurrable for indefiniteness. **Truehart**, 13 A. 661, 79 S. E. 755.
- Of shares of stock, indictment sufficient. **Carter**, 17 A. 90, 86 S. E. 287.
- Indictment for, sufficient. **Bridges**, 103/21, 29 S. E. 859; **Hayes**, 114/25, 40 S. E. 13.
- Allegation of intent to steal, not essential in indictment alleging that the accused did "embezzle, steal, and fraudulently take and carry away," etc. **Cason**, 16 A. 820, 823, 86 S. E. 644.
- Emergency**, creator of, has no right to take advantage of effort to defend

against. Principle applicable. **Short**, 140/781, 80 S. E. 8.

Emigrant agent, indictment for acting as, not fatally defective. **Williams**, 119/180, 45 S. E. 989.

Non-resident coming in and employing laborers for himself is not subject to tax as. **Theus**, 114/53, 39 S. E. 913. Evidence and indictment insufficient. **Woodson**, 114/844, 40 S. E. 1013.

Employee's violation of instructions, charge upon defense based on, should be requested. **Ramfos**, 120/175, 47 S. E. 562.

Enticing away laborer; indictment sufficient. **Stephens**, 22 A. 123, 95 S. E. 537.

Errors immaterial, in view of evidence which demanded verdict of guilty. **Hall**, 17 A. 806, 88 S. E. 592; **Cason**, 16 A. 820, 86 S. E. 644; **Skinner**, 13 A. 370, 79 S. E. 181; **Cook**, 22 A. 770, 97 S. E. 264.

Not cause for reversal, where verdict of murder demanded by evidence. **Perry**, 102/365, 30 S. E. 903; **Luby**, 102/633, 29 S. E. 494.

Not shown to be prejudicial, not ground for new trial, where evidence warrants verdict. **Brannon**, 21 A. 328, 94 S. E. 259.

Not material, conviction not set aside. **Turner**, 9 A. 8, 70 S. E. 194.

Slight, not likely to have affected jury, not require reversal, in plain case of guilt. **Hall**, 7 A. 121, 66 S. E. 390.

Discussion of rule that reversals will not be granted for error without injury; errors from which injury will not be presumed. **Hall**, 8 A. 751, 752, 70 S. E. 211.

Induced by conduct of counsel, not ground for new trial. **Threlkeld**, 128/660, 58 S. E. 49.

Invited by request of counsel, no ground for complaint. **Harris**, 120/169, 47 S. E. 520; **Horton**, 120/307, 47 S. E. 969; **Robinson**, 120/312, 47 S. E. 968. But counsel's argument to jury does not deprive accused of theory required by evidence. *Ib.* 307.

In charging on higher grades, immaterial where conviction was of lower

grade. **Gray**, 12 A. 634, 77 S. E. 916. Instructions on involuntary manslaughter, properly omitted. **Segar**, 12 A. 685, 78 S. E. 51.

In charging on murder and voluntary manslaughter, immaterial, where verdict involuntary manslaughter. **Gray**, 12 A. 634, 77 S. E. 916.

Escape, accusation of, need not allege where court which sentenced accused was located, or that it had jurisdiction to try him. Allegation of unlawful escape dispenses with need of alleging that chain-gang was a lawful place of confinement. **Daniel**, 114/533, 40 S. E. 805.

Exception in law under which indictment drawn, rule as to when necessary to allege that the accused is not within. **Seale**, 121/745, 49 S. E. 740. See **Oglesby**, 121/602, 49 S. E. 706; **Rumph**, 119/122, 45 S. E. 1002; **Tigner**, 119/114/45 S. E. 1001.

Not necessary to negative, in indictment here. **Jones**, 8 A. 411, 69 S. E. 315; **Kitchens**, 116/847, 43 S. E. 256; **McAdams**, 9 A. 166, 70 S. E. 893. Necessary here. **Dukes**, 9 A. 537, 71 S. E. 921.

Not negated in indictment. **Lanier**, 5 A. 472, 63 S. E. 536. When not necessary to negative exception. **Stoner**, 5 A. 716, 732, 63 S. E. 602. When necessary, and when not. **Blocker**, 12 A. 81, 76 S. E. 784; **Sims**, 12 A. 363, 77 S. E. 188; **Livingston**, 6 A. 208, 64 S. E. 709.

Must be negated by plea and proof; general rule. **McCain**, 2 A. 391, 58 S. E. 550.

State's evidence must take case out of. **Ferguson**, 1 A. 841, 58 S. E. 57.

Burden on accused to bring himself within; how affected by burden on State to show guilt. **Harris**, 14 A. 574, 81 S. E. 815.

Exhumation and search for bullet, to ascertain whether discharged from pistol fired by accused or from another, refusal to charge that burden of, was on State. **Smalls**, 105/675, 31 S. E. 571.

Explosive or implement intended to be used in crime, possession of; offense under act of 1910, improperly joined in indictment with offense under Penal Code (1910), § 787. *Belcher*, 19 A. 439, 91 S. E. 879.

Extortion by threat of levy; indictment sufficient. *Dean*, 9 A. 303, 71 S. E. 597.

False imprisonment, policeman convicted of. *Coker*, 14 A. 606, 81 S. E. 818. Action for damages on account of. *Grist*, 14 A. 147, 151, 80 S. E. 519.

False pretenses, sufficiency of indictment for, in extradition case. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

No defense that prosecutor should not have been deceived by. *Ryan*, 104/82, 30 S. E. 678.

False statement by accused, as to option of. *Mitchell*, 103/19, 29 S. E. 435.

False swearing, sufficiency of indictment portunity to commit offense; explanation. *Norton*, 5 A. 586, 63 S. E. 662; *Phillips*, 5 A. 597, 63 S. E. 667.

Indictment need not expressly allege oath was taken not in judicial proceeding, when facts averred show this. *Thompson*, 120/132, 47 S. E. 566.

Joint indictment of persons joining in one affidavit. *Norton*, 5 A. 586, 63 S. E. 662.

False writing, obtaining goods by; error in charge to jury. Proof essential, that writing was made in some other person's name, or a fictitious name. *Sessions*, 3 A. 13, 59 S. E. 196.

Farm labor, enticing away; indictment sufficient. *Stephens*, 22 A. 123, 95 S. E. 537.

Fault of defendant in provoking attack on himself; charge to jury as to, considered. *Swain*, 15 A. 449, 83 S. E. 642. When error to charge as to. *Davis*, 14 A. 766, 82 S. E. 297.

Fears reasonable, doctrine of, applicable. *Battle*, 103/58, 29 S. E. 491. Not applicable. *Short*, 140/780, 80 S. E. 8.

Evidence tending to show. *Daniel*, 103/202, 29 S. E. 767.

Threats and drawing of weapon as ground for. *Johnson*, 105/665, 31 S. E. 399; *Johnson*, 139/92, 93, 76 S. E. 859.

Circumstances sufficient to excite. *Smith*, 106/674, 32 S. E. 851, 71 Am. St. R. 286; *Dill*, 106/687, 32 S. E. 660.

Of bodily harm, as defense, error in charge as to. *Williams*, 107/727, 33 S. E. 648.

Shooting under. *Frazier*, 112/868, 38 S. E. 349.

As defense of homicide. *Tolbirt*, 124/768, 53 S. E. 327; *Clay*, 124/795, 53 S. E. 179. Homicide under. *Williams*, 120/870, 48 S. E. 368; *Smarrs*, 131/22, 61 S. E. 914; *Taylor*, 331/769, 63 S. E. 296; *Pierce*, 132/30, 63 S. E. 792. Cf. *Pickens*, 132/46, 63 S. E. 783; *Pressley*, 132/64, 63 S. E. 784; *Lyens*, 133/587, 66 S. E. 792.

Homicide under. Sufficiency for jury. *Reed*, 148/18, 95 S. E. 692. Courageous, not cowardly man. *Smoot*, 148/306, 96 S. E. 561.

Homicide under. Prisoner's statement authorized finding. *Palmour*, 116/269, 42 S. E. 512.

Doctrine of, not applied to case of shooting under fear that one shot was attempting to seduce or debauch daughter of accused. *Fuller*, 127/47, 55 S. E. 1047.

Of felony. *Herrington*, 130/316, 320, 60 S. E. 572.

Of felony, as defense of homicide. *Alexander*, 118/26, 44 S. E. 851; *Campbell*, 144/225, 87 S. E. 277.

Doctrine of, not connected with offense of manslaughter. *Dickens*, 137/523, 530, 73 S. E. 826.

As ground of defense of homicide; reasonable courage and self-possession implied. *Coleman*, 141/732, 82 S. E. 228; *Graham*, 143/441, 85 S. E. 328, Ann. Cas. 1917A, 595. Not excluded by stating law of manslaughter. *Butler*, 143/484, 85 S. E. 340.

Meaning of. *Holland*, 3 A. 467, 60 S. E. 205; *Warnack*, 3 A. 590, 60 S. E. 288.

As theory of defense, where one of several persons stealing melons was shot. *Jordan*, 135/434, 69 S. E. 562.

As defense for homicide, not applicable where danger not apparently pressing at the time. *Ellison*, 137/193, 73 S. E. 255.

Felony should be defined in charge to jury. *Roberts*, 114/453, 40 S. E. 750.

Not defined in charge of court, no cause for new trial. *Faison*, 13 A. 181, 79 S. E. 39; *Franklin*, 15 A. 350, 83 S. E. 196; *Jordan*, 16 A. 400, 85 S. E. 455; *Cook*, 22 A. 266, 96 S. E. 293; *Carver*, 14 A. 267, 80 S. E. 508.

Misleading addition to definition of. *Freeman*, 1 A. 276, 57 S. E. 924.

Incorrect designation of offense as, not render indictment bad, where facts alleged constituted a misdemeanor. *Lummas*, 17 A. 414, 87 S. E. 147. Not prejudicial, where sentence was for misdemeanor. *Cabaniss*, 8 A. 135, 68 S. E. 849.

Indictment designating offense as "simple larceny, a felony," not bad because the act charged therein was larceny of a bale of cotton. *Edwards*, 22 A. 796, 97 S. E. 205.

Female's reputation, battery in defense of. *Farmer*, 7 A. 688, 67 S. E. 834. Homicide in defense of. *Renfroe*, 8 A. 676, 70 S. E. 70.

Finding and return of indictment into court; discussion and citations. *Barlow*, 127/58, 56 S. E. 131.

Fishing in salt creek, etc., by one not proprietor (Penal Code, § 601); indictment should name owner or proprietor. Indictment not demurrable because of omission of allegation as to posting, or that the fishing was between high and low water marks. *Burbank*, 22 A. 647, 648, 96 S. E. 1043.

On posted land; sufficiency of accusation and evidence. *Williams*, 2 A. 629, 58 S. E. 1071, 1072.

Flight, not authorize pursuing officer to shoot. *McAllister*, 7 A. 541, 67 S. E. 221.

As evidence of guilt. See catchword "Flight," under 5, *infra*.

Forgery and felonious uttering of check, sufficiency of indictment for. *Brazil*, 117/32, 43 S. E. 460. Forgery and uttering the forged paper may be joined in one count of indictment. *Nalley*, 11 A. 15, 74 S. E. 567; *Blount*, 11 A. 239, 74 S. E. 1099.

Indictment for, not subject to demurrer. *Jordan*, 127/278, 56 S. E. 422.

Indictment for forgery of will should be drawn under § 231 of Penal Code (1910), not § 245, and should allege intent to defraud the State or some person. *Beall*, 21 A. 73, 94 S. E. 74. Conviction under indictment without such allegations, void. *Id.*

Indictment for uttering a forged paper, sufficient, where in the language of the statute defining the offense. *Curtis*, 16 A. 678, 85 S. E. 980.

Indictment not demurrable because the forged paper was addressed merely "Mr. Griffin," and did not indubitably indicate the person intended. *Curtis*, 16 A. 678, 85 S. E. 980.

Indictment not subject to general demurrer; subject to special demurrer for lack of certainty. *Chambers*, 22 A. 749, 97 S. E. 256.

Indictment sufficient. *Thomas*, 22 A. 188.

Indictment sufficient, venue sufficiently shown, conviction authorized. *Williamson*, 18 A. 753, 90 S. E. 485.

Of an order for a thing other than money; indictment not alleging that the thing (meat) was of some value was fatally defective. *Johnson*, 109/268, 34 S. E. 573. See *McCombs*, 109/500, 34 S. E. 1023.

Sufficiency of allegations as to fraud, etc. *Taylor*, 123/133, 51 S. E. 326.

Sufficiency of indictment for forging or fraudulently altering teacher's license. *Taylor*, 123/133, 51 S. E. 36.

Sufficiency of indictment in setting out instrument. *Haupt*, 108/53, 34 S. E. 313, 75 Am. St. R. 19. Forged instrument not sufficiently set forth in indictment. *Taylor*, 123/133, 51 S. E. 326.

When necessary to allege that the forged paper was uttered and published as true, and when not. **Barron**, 12 A. 342, 77 S. E. 214.

Formalities, right of accused to insist on. **Hopkins**, 6 A. 403, 65 S. E. 57.

Former acquittal, or jeopardy, not a defense against second trial for murder, after grant of new trial on motion of accused, upon conviction of manslaughter under same indictment. **Brantley**, 132/573, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203; **Perdue**, 134/300, 67 S. E. 810.

Plea in bar, on same-transaction test, not demurrable. **Burnam**, 2 A. 396, 58 S. E. 683.

Sufficient plea of former jeopardy, where one is acquitted of violation of Penal Code (1910), § 551, as to failure to pay for cotton, etc., was afterwards indicted under § 545, for giving worthless check for cotton. **Whitaker**, 9 A. 213, 70 S. E. 990.

Of burglary, no bar to indictment for receiving stolen goods. **Pat**, 116/92, 42 S. E. 389. Bigamy by marrying **Gussie**, acquittal of, when no bar to prosecution for marrying **Bessie**. **Gully**, 116/527, 42 S. E. 790. Words obscene and vulgar in presence of female; acquittal no bar to prosecution for using opprobrious words and abusive language to and of another. **McIntosh**, 116/543, 42 S. E. 793.

Of homicide of living man, not good as defense to indictment for killing another, though the latter was intended to be named in first indictment. **Moody**, 1 A. 772, 58 S. E. 262.

Of retailing liquor without license not bar prosecution for keeping open tippling-house on Sabbath, though evidence same in both cases. **Smith**, 105/724, 32 S. E. 127.

On indictment for entering store situated on a named street, with intent to steal, no bar to conviction under a like indictment as to entering a store situated at the corner of other streets. **Dunham**, 21 A. 789, 95 S. E. 269.

On void accusation, no bar. **Simmons**, 106/355, 32 S. E. 339.

Plea good, with attached copy of former presentment for selling liquor. **Craig**, 108/776, 33 S. E. 653.

Plea of, not good where based on quashing of accusation on demurrer filed by accused, though the demurrer was first overruled and testimony introduced. **Brown**, 109/570, 34 S. E. 1031.

Under void indictment, no bar to prosecution under valid one for offense growing out of same transaction. **Hill**, 122/573, 50 S. E. 344. Plea good which alleges that indictment is based on same transactions as that formerly investigated. **Lock**, 122/730, 50 S. E. 932.

Or conviction, as bar to prosecution; "same-evidence test" applied. **Collier**, 8 A. 371, 69 S. E. 29; **Dean**, 9 A. 574, 71 S. E. 932; **Powell**, 9 A. 617, 71 S. E. 1013. Rules for testing defenses of. **Gully**, 116/528, 42 S. E. 790; **McIntosh**, 116/543, 42 S. E. 793. Plea of, when sufficient. **Bell**, 103/397, 30 S. E. 294, 68 Am. St. R. 102. Issue as to whether separate offenses were committed by representations made near the same time, as to the same matter. **Williams**, 8 A. 583, 70 S. E. 47.

Former conviction and present imprisonment thereunder, when not prevent trial for a different offense. **Coleman**, 4 A. 786, 62 S. E. 487.

Not avail, where former prosecution for lesser offense was procured by fraud or collusion of defendant. **Bell**, 103/397, 30 S. E. 294, 68 Am. St. R. 102.

Too late to file plea of, pending trial on plea of not guilty. **Hall**, 103/403, 29 S. E. 915.

No bar to conviction of higher grade of crime, on new trial granted on the defendant's own motion. **Yeates**, 4 A. 573, 62 S. E. 104.

Of carrying concealed weapon, plea of, not supported by facts here. **Morgan**, 119/964, 47 S. E. 567.

Of carrying pistol to church, no bar to prosecution for carrying pistol concealed; as a matter of law, the transactions are not the same. **Veasy**, 4 A. 845, 62 S. E. 561.

Of lesser offense, new trial for greater. **Waller**, 104/505, 30 S. E. 835.

Of liquor-selling; plea good, indictment laying offense before former indictment found. **McWilliams**, 110/290, 34 S. E. 1016.

Of retailing liquor without license, no bar to prosecution under general prohibition law of 1907. **Glover**, 4 A. 455, 61 S. E. 862.

Of similar offense, evidence as to, when admissible. **Bashinski**, 123/509, 51 S. E. 499.

Plea of, not sustained; two assaults on separate individuals in immediate succession not in response to joint attack. **Fews**, 1 A. 122, 58 S. E. 64.

Plea of, when good where the two cases involve separate transactions. **McCoy**, 121/359, 49 S. E. 294.

Set aside, no bar to conviction of different offense, though same evidence pertinent on both trials. **Taylor**, 110/150, 35 S. E. 161.

Under city ordinance prohibiting the keeping open of place of business on Sunday, no bar to prosecution under ordinance prohibiting "near beer" business without license. **Cohen**, 8 A. 851, 70 S. E. 140.

Under indictment charging offense in general terms, effect of, as bar to prosecution. **Morgan**, 119/965, 47 S. E. 567.

Of larceny of one of several articles of different owners, taken at one time, bars prosecution for larceny of another of the articles, though omitted from former indictment. **Dean**, 9 A. 571, 71 S. E. 932.

Under indictment charging offense to have been committed in the presence of A, no bar to prosecution under one charging commission in the presence of B, when. **Morgan**, 119/964, 47 S. E. 567.

Under repealed law, no bar to prosecution under present law, when. **Glover**, 4 A. 455, 61 S. E. 862.

Former indictment pending, no ground for plea in abatement or in bar. **Gray**, 6 A. 428, 65 S. E. 191; **Cabaniss**, 8 A. 129, 68 S. E. 849; **Hurst**, 11 A. 754, 76 S. E. 78; **Harris**, 11 A. 137, 74 S. E. 895; **Brown**, 13 A. 437, 79 S. E. 231.

Pending, no ground for plea in abatement or in bar, though the accused was arraigned thereon and filed plea. **Irwin**, 117/706, 45 S. E. 48.

Pending, not vitiate trial under another indictment. **Appleby**, 9 A. 570, 71 S. E. 876; **Gray**, 6 A. 428, 65 S. E. 191; **Cabaniss**, 8 A. 129, 68 S. E. 849; **Brown**, 13 A. 437, 79 S. E. 231.

Pending, no basis of plea in abatement or in bar. **Johnston**, 118/313, 45 S. E. 381; 46 S. E. 488.

Former jeopardy, a defense favored by courts. **Mance**, 5 A. 230, 62 S. E. 1053.

After sustaining plea of prior conviction, it was not error to order that the former verdict be established, and to sentence the defendant thereunder. **Darsey**, 17 A. 280, 86 S. E. 781.

Burden on defendant to prove plea of, not successfully carried; identity of transaction (theft of liquors, etc.) not shown. **Mance**, 5 A. 229, 62 S. E. 1053.

Conviction by court without jurisdiction, no bar to subsequent conviction. **Barra**, 22 A. 642, 97 S. E. 86; **Walker**, 22 A. 765, 97 S. E. 195.

Conviction under city ordinance, no bar to prosecution under State law. **Howell**, 13 A. 75, 78 S. E. 859; **Morris**, 18 A. 684, 90 S. E. 361.

Court could not, by limiting range of evidence on second trial, prevent the accused from setting up former jeopardy. **Webb**, 13 A. 733, 80 S. E. 14

Effect of rule that an indictment alleging commission of a misdemeanor on a given date may be supported by proof of its commission at any time within two years preceding the finding of the indictment. **Webb**, 13 A. 733,

80 S. E. 14; *Sable*, 14 A. 816, 82 S. E. 379; *Hudgins*, 22 A. 242, 95 S. E. 875.

Estoppel of State by contesting plea of. *Mance*, 5 A. 229, 62 S. E. 1053.

Exception in constitution, in case of "motion for a new trial," did not apply where reversal of judgment was procured by bill of exceptions without motion for new trial. *Jenkins*, 14 A. 277, 80 S. E. 688. Not apply to verdict which is a nullity and amounts to an acquittal. *Ezzard*, 11 A. 30, 74 S. E. 551.

Meaning of exception in constitution, in case of "motion for new trial after conviction." *Register*, 12 A. 4, 76 S. E. 649. "Same-transaction test." *Moore*, 12 A. 578, 77 S. E. 1132.

Facts supporting plea of. *Ingram*, 124/448, 52 S. E. 759; *Bell*, 103/397, 30 S. E. 294, 68 Am. St. R. 102.

General charge of liquor-selling puts in jeopardy. *Craig*, 108/776, 33 S. E. 653.

In the absence of such a plea, failure to charge jury that defendant could only be convicted on evidence that he committed the offense after his trial on the former indictment does not require new trial. *Sable*, 14 A. 816, 82 S. E. 379.

Issue on former jeopardy, to be determined by allegations of former indictment. *Bone*, 11 A. 128, 74 S. E. 852.

Jeopardy begins when. *Gray*, 6 A. 430, 65 S. E. 191. Where result of trial was equivalent to mistrial, without consent or legal necessity. *Hopkins*, 6 A. 403, 65 S. E. 57.

Jeopardy, accused in, where evidence for the State introduced on trial in county court under indictment transferred from superior court. *Ingram*, 124/448, 52 S. E. 759.

Jeopardy twice for same offense, under municipal ordinance and under State law, forbidden. *Mayo*, 146/652, 92 S. E. 59.

"Jeopardy of liberty," is created by trial where conviction would deprive of liberty to vote, etc. *Jenkins*, 14 A. 277, 80 S. E. 688.

Judgment overruling plea of, not proper matter for motion for new trial. *Vaughn*, 16 A. 573, 85 S. E. 790.

Judgment striking plea of, not reviewable by writ of error before judgment finally disposing of case. *McElroy*, 123/546, 51 S. E. 596.

Jury trial on plea of, waived by not making timely objection to trial by judge. *Thomas*, 7 A. 637, 67 S. E. 894. Former jeopardy where jury stricken, and then discharged. *Ib.* 638.

Merger of misdemeanor into felony; common-law rule as to, abolished. *Sharp*, 7 A. 606, 67 S. E. 699.

Mistrial because of disqualification of judge trying case without jury; no basis for plea of former jeopardy, here. *Walker*, 19 A. 98, 90 S. E. 1041.

No basis for plea of, where the court, without objection, withdrew the case from the jury, on juror's statement, made when the first witness was about to be examined, that the juror was on the grand jury that found the indictment. *Minyard*, 17 A. 398, 87 S. E. 710.

No error in striking plea of former conviction of sale of liquor, where the former indictment preceded dates alleged in the pending accusation as dates between which the offense was committed. *Hudgins*, 22 A. 243, 95 S. E. 875.

No ground for habeas corpus; plea should be interposed on arraignment. *Yeates*, 4 A. 573, 62 S. E. 104.

Not to be set up by habeas corpus; but by certiorari, if plea overruled. *Holder*, 141/217, 80 S. E. 715.

No jeopardy before jury has been sworn; whether it commences when they are sworn, not decided. *Fortson*, 13 A. 681, 79 S. E. 746.

One whose plea of former conviction was sustained was not entitled to complain that the court thereafter treated the conviction as valid. *Darsey*, 17 A. 280, 86 S. E. 781.

Plea alleging former conviction under city ordinance, but not setting forth the ordinance, demurrable. *Howell*, 13 A. 74, 78 S. E. 859.

Plea good, where the facts required to support the second indictment would

have been sufficient to convict under the first. **Sable**, 14 A. 816, 82 S. E. 379.

Plea necessary; evidence as to, properly rejected in absence of such plea. **Taylor**, 17 A. 447, 87 S. E. 602.

Plea of, not demurrable for failure to allege that a valid judgment of conviction was entered on the verdict. **Jenkins**, 14 A. 276, 80 S. E. 688.

Plea of, based on mistrial on account of absence of accused under bond; not good. **Fraser**, 21 A. 154, 94 S. E. 79.

Plea of, cannot be based on trial under void accusation. **Renfro**, 10 A. 38, 72 S. E. 520; **Simmons**, 106/355, 32 S. E. 339. Or void indictment. **Walker**, 12 A. 92, 93, 76 S. E. 762.

Plea of, in municipal court, when not good, though showing a conviction in a State court, based on the same transaction. **Sutton**, 4 A. 30, 60 S. E. 811.

Plea of, when good, though descriptive averments of the former indictment were incorrect. **Burch**, 4 A. 384, 61 S. E. 503.

Plea of, without copy of former accusation, demurrable. **Whitley**, 14 A. 577, 81 S. E. 797.

Plea of, not entertained after arrest of judgment on motion of accused for defective indictment. **Hill**, 122/572, 50 S. E. 344. Plea of, on acquittal of different offense in same transaction, good. **Lock**, 122/730, 50 S. E. 932.

Plea not good under facts here. Dissenting opinion in **Black**, 36/447, approved. **Brown**, 109/570, 34 S. E. 1031.

Proper allegations in second indictment, to avoid plea of former jeopardy. **Sable**, 14 A. 819, 82 S. E. 379; **Hudgins**, 22 A. 243, 95 S. E. 875.

Prosecution for disturbing Sunday school, not barred by proceeding under indictment for disturbing divine service. **Clay**, 4 A. 142, 60 S. E. 1028.

"Same-transaction test." **Burch**, 4 A. 385, 387, 61 S. E. 503. See **Tooke**, 4 A. 503, 61 S. E. 917; **Veasy**, 4 A. 845, 62 S. E. 561; **Black**, 13 A. 545, 546, 79 S. E. 173; **Webb**, 13 A. 735, 80 S. E. 14. Plea good, where the facts required to support the sec-

ond indictment would have been sufficient to convict under the first. **Webb**, 13 A. 735, 80 S. E. 14.

"Same-transaction test;" whether prosecution for sale of liquor was barred by acquittal of keeping for sale. **Mance**, 5 A. 230, 62 S. E. 1053.

This results where offense involves moral turpitude, though no other punishment be prescribed. **Jenkins**, 14 A. 276, 80 S. E. 688.

When jeopardy results from trial, though the statute defining the crime omits provision for punishment. **Jenkins**, 14 A. 276, 80 S. E. 688.

Trial of plea of, with plea of not guilty, illegal. Special verdict required. **McWilliams**, 110/290, 34 S. E. 1016.

Plea good after mistrial declared. **Oliveros**, 120/237, 47 S. E. 627, 1 Ann. Cas. 114. When ground for plea, after mistrial declared in absence of prisoner. **Bagwell**, 129/170, 58 S. E. 650.

When former verdict bars prosecution though not received by the court. **Register**, 10 A. 623, 630, 74 S. E. 429; **Register**, 12 A. 4, 76 S. E. 649.

Former sentence, when must be charged in the indictment. Need not be alleged and proved as basis of imposing maximum penalty. **McWhorter**, 118/55, 44 S. E. 873.

Former verdict, concealment of, by pasting paper over it, on indictment handed to jury, discretion of judge as to. **Kincaid**, 13 A. 683, 79 S. E. 770.

Form of indictment or accusation, discussion of law as to. **Hardin**, 106/384, 32 S. E. 365, 71 Am. St. R. 269.

Of indictment prescribed by statute; when not sufficient, as against demurrer. **Dixon**, 20 A. 521, 93 S. E. 274.

Exceptions to, must be made by written motion to quash, or demurrer, before pleading to merits. **Gilmore**, 118/299, 45 S. E. 226; **Sanders**, 118/329, 45 S. E. 365.

Exceptions to, waived, if not taken before joinder of issue. Not ground to arrest judgment. **Newsome**, 2 A. 392, 58 S. E. 672.

Defects in, waived by going to trial without objection. *Christopher*, 16 A. 194, 84 S. E. 833.

Fornication and adultery, indictment for, sufficient. *Alexander*, 122/174, 50 S. E. 56.

Name of person with whom committed, not correctly given in indictment. *Whittington*, 121/193, 48 S. E. 948.

Fraud, sufficiency of allegations as to, in indictment, for forgery. *Taylor*, 123/136, 51 S. E. 326.

Fraudulent intent; sufficient allegation as to. *Campbell*, 121/168, 48 S. E. 920.

Fraudulently obtaining credit. Indictment fatally defective. *Hammond*, 15 A. 471, 83 S. E. 860.

Fraudulent representation as to ownership of land, to obtain loan from bank; allegations sufficiently definite as to the land, the nature of the loan, the relationship of the person dealt with to the bank, etc. *Livingston*, 17 A. 136, 86 S. E. 449.

Insufficient indictment as to. *Hammond*, 15 A. 471, 83 S. E. 860.

Person to whom representations were made should be alleged in indictment. *McLendon*, 16 A. 263, 85 S. E. 200.

Freight-train run on Sunday; joint indictment against "superintendent" and "master of trains" who "had charge of . . . the running of trains," demurrable. *Vaughan*, 116/841, 43 S. E. 249.

Game; indictment alleging shooting at doves. *Weaver*, 17 A. 73, 88 S. E. 414.

Fishing in closed season, indictment sufficient. *Bolton*, 12 A. 358, 77 S. E. 208.

Gaming; accusation not bad because more specific than affidavit on which based, which described the alleged criminal act merely as the offense of "gaming." *Glass*, 119/299, 46 S. E. 435.

Accusation of gaming "with cards and dice" described with sufficient particularity the game and the manner of playing it. *Woody*, 113/927, 39 S. E. 297.

Alternative charge that defendant played and bet "for money, or other thing of value," bad. *Cooper*, 9 A. 877, 72 S. E. 436. Circumstances warranting conviction. *Parks*, 9 A. 233, 70 S. E. 966; *Twilley*, 9 A. 435, 71 S. E. 587.

Demurrable indictment for, not subject to attack after conviction on habeas corpus. *Pulliam*, 140/864, 80 S. E. 315.

Indictment for, sufficient, without naming or describing things of value, other than money, for which accused played. *Brand*, 112/25, 37 S. E. 100.

Indictment need not allege with whom the accused played; but proof of play with undisclosed persons will not support a conviction of one under a joint indictment. *Hubbard*, 123/18, 51 S. E. 11.

Indictment for renting house for gaming need not name tenant. *Bashinski*, 123/508, 51 S. E. 499.

Joint charge of, when not supported by proof of play by one of accused with undisclosed persons. *Pullen*, 116/555, 42 S. E. 774.

Name of game need not be alleged in indictment; but if alleged it is necessary to prove that the game alleged was played. *Hicks*, 16 A. 228, 84 S. E. 837.

Good faith, as defense in larceny case. *Musgrove*, 5 A. 467, 63 S. E. 538. In trespass case. *Cooper*, 5 A. 697, 63 S. E. 719.

Claim of ownership not conclusive evidence of, in case of, one charged with malicious injury to another's fence. *Woods*, 10 A. 476, 73 S. E. 608.

Error in not giving charge requested, as to effect of honest mistake on part of defendant on trial for cheating and swindling. *Whitaker*, 11 A. 209, 217, 75 S. E. 258.

Of parties compounding felony, not material. *Hays*, 15 A. 386, 83 S. E. 502.

Grade of crime higher than that of which accused was convicted, error in charging jury as to, harmless. *Tipton*, 8 A. 92, 68 S. E. 614.

As to which evidence raises doubt, court should charge on. **Cain**, 7 A. 24, 65 S. E. 1069. Error in charge of court as higher grade, rendered harmless by verdict finding lower grade. **Warnack**, 7 A. 74, 66 S. E. 393.

Conviction of shooting at another under indictment for assault to murder, proper, when. **Rhinehart**, 7 A. 425, 66 S. E. 982. Conviction of simple larceny, under accusation of larceny from house, proper. **Brundage**, 7 A. 726, 67 S. E. 1051.

Error in charge to jury as to higher grade, not harmful to one convicted of lower grade. **Braxley**, 17 A. 201, 202, 86 S. E. 425; **Deal**, 18 A. 70, 88 S. E. 902; **Crone**, 22 A. 636, 97 S. E. 83.

Error in refusing to receive verdict for lower grade and receiving subsequent verdict for higher grade; defendant estopped from objecting to former verdict, by procuring decision to this effect. **Register**, 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142.

General verdict of guilty construed as applying to highest grade charged. **Scott**, 14 A. 806, 82 S. E. 376.

Instruction that "there is involved in this case another grade of homicide," not an intimation of opinion as to what was proved. **Deal**, 18 A. 70, 88 S. E. 902.

Judge has no authority to refuse to receive verdict for lower grade than charged, where the accused does not object, though the verdict be unwarranted. **Register**, 10 A. 623, 73 S. E. 429.

Lesser, included in charge of greater; rule and qualification. **Fields**, 2 A. 45, 58 S. E. 327. See **Reed**, 2 A. 153, 58 S. E. 312.

Lower grades embraced in indictment for murder. **Davis**, 14 A. 764, 82 S. E. 297.

Lower grade found, verdict supported, though some evidence of higher grade. **Harbin**, 127/48, 55 S. E. 1046.

Lower than charged in indictment; when not prejudicial error to omit in-

struction to jury as to. **Jones**, 12 A. 134, 135, 76 S. E. 1070. Error in charging jury on higher grades, immaterial, where conviction was of lower grade. **Gray**, 12 A. 634, 77 S. E. 916.

Lesser than charged in indictment, effect of "true bill" for. **Williams**, 13 A. 83, 78 S. E. 854.

Not involved, no issue thereon to be submitted. **Langston**, 23 A. 82, 97 S. E. 444.

Proved, higher than that charged, conviction of the crime charged upheld, when. **Mattox**, 115/222, 41 S. E. 709; **Gardner**, 105/663, 31 S. E. 577.

When error to omit charge to jury on. **Smalls**, 6 A. 502, 65 S. E. 295. When not. **Livingston**, 6 A. 805, 65 S. E. 812. Joinder of, in indictment. **Mitchell**, 6 A. 554, 65 S. E. 326.

Found lower than charged, verdict authorized. **Harris**, 120/167, 47 S. E. 520; **Chapman**, 120/855, 48 S. E. 350. When error not to submit lesser offense in charge to jury. **Horton**, 120/307, 47 S. E. 969.

Lesser offense, conviction of, under indictment for greater; rule as to. **Smith**, 126/545, 55 S. E. 475; **Watson**, 116/607, 43 S. E. 32, 21 L. R. A. (N. S.) 1; **Walker**, 136/126, 127, 70 S. E. 1016; **Goldin**, 104/550, 30 S. E. 749; **Smith**, 127/269, 56 S. E. 360; **Kendrick**, 113/760, 39 S. E. 286.

Grand jury, indictment not properly indorsed by foreman of, not bad, when. **Harrell**, 11 A. 407, 408, 75 S. E. 507.

Resummoned after being discharged by court, indictment by, was legal. **Bird**, 142/596, 83 S. E. 238, Ann. Cas. 1916C, 205.

Plea in abatement, that witnesses were not sworn before, insufficient here. **Stapleton**, 19 A. 36, 90 S. E. 1029.

Indictment returned at adjourned term by grand jury that served at preceding regular term, no ground for plea in abatement; disqualifying act of 1903 does not apply to adjourned term. **Hall**, 4 A. 841, 62 S. E. 539.

Indictment signed by foreman of, what sufficient; presumed that one signing as foreman was such, though another was designated as such in the list thereon. *Taylor*, 121/363, 49 S. E. 317.

Endorsement on indictment sufficient to show it was found by, as against motion to quash. *Barlow*, 127/58, 56 S. E. 131.

Testimony before, is no basis for indictment, if not given in that particular case. *Evans*, 17 A. 120, 86 S. E. 286.

Want of evidence before, when indictment not quashed for, on plea in abatement. *Chapman*, 148/531, 97 S. E. 546; *Johnson*, 148/546, 97 S. E. 515.

Failure to return indictment as true at two terms raises bar to prosecution under the same or another name. Defense, how raised. *Elliott*, 1 A. 113, 57 S. E. 972.

Where some of, were ineligible because of service at preceding term; plea in abatement here good. *McFarlin*, 121/329, 49 S. E. 267.

Where member of, was ineligible because not a resident of the county six months; what must appear to sustain plea in abatement. *Folds*, 123/167, 51 S. E. 305.

Indictment headed with name of State and county, sufficient to show the county referred to in the next sentence: "The grand jurors, selected, chosen, and sworn for the county of . . . , to wit," etc. *Odum*, 21 A. 310, 94 S. E. 257.

Objections as to number of grand jurors and their competency should be made before true bill is found. *Evans*, 17 A. 120, 86 S. E. 286.

Names of grand jurors, requirement as to insertion of. *Taylor*, 121/363, 364, 49 S. E. 317.

Not named in indictment; ground for quashing it. *Willerson*, 14 A. 451, 81 S. E. 391.

Names omitted from indictment. *Williams*, 107/723, 33 S. E. 648.

Member of, disqualified, demurrer not good; motion to quash, or plea in abatement, proper. *Cooper*, 106/119, 32 S. E. 23.

Illegally or irregularly drawn, when no cause to quash indictment. *Tucker*, 135/79, 68 S. E. 786.

Guilt or innocence determined by considering not only testimony and statement of accused, but charge of court. *Donaldson*, 3 A. 452, 60 S. E. 115.

Guilty had better go unpunished than that an innocent person should suffer, refusal to charge to this effect, not error. *Mixon*, 123/582, 584, 51 S. E. 580, 107 Am. St. R. 149.

Effect of general verdict of, on indictment in two or more counts. *Carlington*, 18 A. 105, 88 S. E. 915; *Innes*, 19 A. 271, 273, 91 S. E. 339; *Bishop*, 21 A. 236, 94 S. E. 49. When not legal. *Sewell*, 23 A. 765, 99 S. E. 320.

General verdict construed as applying to higher of two offenses embraced in indictment. *Scott*, 14 A. 806, 82 S. E. 376.

General verdict on indictment in two counts; not sustainable, if one count is not supported by evidence. *Dozier*, 14 A. 473, 81 S. E. 368; *Jones*, 14 A. 535, 81 S. E. 586.

On each count of indictment; effect of verdict. *Brannon*, 21 A. 328, 330, 94 S. E. 259.

Verdict, "Guilty of shooting at another, with intent to kill;" not void for uncertainty. *Espy*, 19 A. 743, 92 S. E. 229. So as to verdict of guilty "of shooting a man." *Autrey*, 23 A. 143, 97 S. E. 753. "Guilty of the unlawful shooting of another;" verdict not void because not descriptive of offense. *Smith*, 14 A. 286, 80 S. E. 512.

Plea of, may be withdrawn before sentence. *Polston*, 15 A. 632, 83 S. E. 1101; *Foster*, 22 A. 109, 95 S. E. 529.

Habeas corpus, judgment of conviction, no bar to discharge on, if based on repealed statute the validity of which was not passed on. *Griffin*, 114/65, 39 S. E. 913.

Hiring out wife, for immoral purposes; sufficiency of indictment. *Lasseter*, 17 A. 323, 86 S. E. 743.

Hog, malicious killing of; indictment and evidence sufficient. *Stokes*, 14 A. 522, 81 S. E. 595. Description of hog sufficient; not necessary to name owner or person in possession. *Ib.* Malice implied, when. *Ib.*

Defense that the killing was in protection of crop, not available in absence of fence as described in the statute, when. *Stokes*, 14 A. 522, 81 S. E. 595.

Description of; whether variance between allegation and proof. *Paulk*, 5 A. 573, 63 S. E. 659.

Stolen, marks on, additional to those alleged, admissible in evidence. *Gibson*, 114/34, 39 S. E. 948.

Homicide, indictment need not allege that the accused was of sound mind. *Brown*, 13 A. 437, 79 S. E. 231.

By shooting with pistol and rifle; allegation not demurrable. *Knight*, 148/40, 95 S. E. 679.

"Felony," in law as to killing to prevent felony, need not be defined, without request. *Smith*, 23 A. 541, 99 S. E. 142.

Indictment for, by shooting with pistol and rifle; sufficiency of allegations as to weapon; not necessary to allege pointing, or that it was likely to produce death. State could prove killing with either weapon alleged. *Brown*, 13 A. 437, 79 S. E. 231.

Date of death shown by allegation that person was killed on given date. *Reed*, 148/18, 95 S. E. 692.

Indictment for murder may be found at any time after the homicide; allegation of date not necessary. *Black*, 14 A. 534, 81 S. E. 588.

Lower grades embraced in indictment for murder. *Davis*, 14 A. 764, 82 S. E. 297.

Involuntary, by physician in administration of chloroform; sufficiency of indictment. *Roughlin*, 17 A. 205, 86 S. E. 452.

Joint defendants; one may be tried and convicted of murder after verdict

of manslaughter as to the other. *McDonald*, 23 A. 125, 97 S. E. 556.

P.C. § 73, facts not requiring submission of. *Copeland*, 23 A. 667, 99 S. E. 136.

Horse-stealing; description of animal. what sufficient; "horse" and "mare" include what. *McLamb*, 4 A. 553, 62 S. E. 107; *Teal*, 119/103, 45 S. E. 964.

Insufficiency of description must be specified in demurrer to indictment. *Tucker*, 114/61, 39 S. E. 926.

Hunting on posted land; variance between indictment and register of posted lands. *Ballew*, 14 A. 427, 81 S. E. 396. Necessary allegations of indictment for. *Hardaway*, 1 A. 150, 58 S. E. 141.

Without license. Indictment defective in not showing the militia district in which defendant hunted outside his own district. *Baker*, 19 A. 84, 90 S. E. 983.

Husband and wife, right of, to defend each other. *Alexander*, 118/27, 44 S. E. 851.

Identity mistaken, defense relied on, not error to charge law of alibi. *Clark*, 7 A. 609, 67 S. E. 697.

Alibi and mistaken identity, virtually same defense, separate instruction on alibi not required. *Glover*, 7 A. 628, 67 S. E. 687.

Of person. *Haynes*, 18 A. 741, 90 S. E. 485. See catchword "Idem sonans," supra.

Of person, not of name, as a test of whether indictment applies to prisoner. *Biggers*, 109/106, 34 S. E. 210.

Of stolen property, with that found in possession of accused, determined by jury. *Cox*, 3 A. 609, 60 S. E. 283.

Ignorance no excuse for crime. *Hale*, 21 A. 659, 94 S. E. 823; *Hayes*, 11 A. 375, 75 S. E. 523. Rule and exception. *Newsome*, 1 A. 793, 58 S. E. 71.

No defense, but knowledge of law not imputed for all purposes. *Ryan*, 104/78, 30 S. E. 678.

Defendant's belief that he was divorced, no defense to charge of adultery. *Jackson*, 21 A. 823, 95 S. E. 631.

No shield to one who refrained from following up a clue. *Rivers*, 118/42, 44 S. E. 859.

Of law no excuse for crime; ignorance of fact may be. *Miley*, 118/274, 45 S. E. 245.

Of law no excuse to officer. *Levar*, 103/43, 29 S. E. 467.

Of unconstitutionality of statute, not protect officer acting under it. *Herrington*, 103/318, 29 S. E. 931, 68 Am. St. R. 95.

Improper remark of prosecuting counsel, when no cause for reversal. *O'Dell*, 120/152, 47 S. E. 577.

Incest, sufficiency of indictment for. *Lipham*, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Inconsistent position in proceedings, when not allowed. *Register*, 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142; *Darsey*, 17 A. 280, 86 S. E. 781.

Indecency public and notorious, allegation of, must show its commission when and where it could have been seen by more than one person. *Lockhart*, 116/557, 42 S. E. 787.

Sufficient indictment for. *Gilmore*, 118/299, 45 S. E. 226.

Inducing laborer to leave employer; indictment sufficient. *Stephens*, 22 A. 123, 95 S. E. 537.

Inequality in size and strength of combatants, effect of. *Morgan*, 119/566, 46 S. E. 836.

Information at common law, accusation in city court is equivalent of. *Progress Club*, 12 A. 178, 76 S. E. 1029.

Insanity as defense. *Roberts*, 123/148, 51 S. E. 374; *Allams*, 123/500, 51 S. E. 506; *Carter*, 2 A. 254, 58 S. E. 532; *Glover*, 129/717, 59 S. E. 816; *Gaynor*, 12 A. 606, 607, 77 S. E. 1072; *Holton*, 137/87, 88, 72 S. E. 949.

Burden of proof as to. *Hobbs*, 8 A. 54, 68 S. E. 515; *Allams*, 123/500, 51 S. E. 506; *Cooper*, 2 A. 731, 59 S. E. 20.

Charge of court sufficient. *Mathis*, 16 A. 381, 85 S. E. 352; *O'Connell*, 5 A. 234, 62 S. E. 1007.

Established from indicia presented by the alleged criminal act (assault to rape) and evidence of mental disease; not rebutted by evidence here as to conduct and conversations, and opinion as to sanity. *Wilson*, 9 A. 274, 70 S. E. 1128.

Evidence here authorized finding against. *Carroll*, 113/720, 39 S. E. 285.

Facts not requiring charge to jury as to. *August*, 20 A. 169, 92 S. E. 956.

As defense for homicide. *Strickland*, 137/115, 72 S. E. 922; *Polk*, 148/34, 95 S. E. 988; *Brown*, 148/264, 96 S. E. 435.

As defense of homicide, issue as to, settled by jury on proper charge by court. *Elliott*, 132/761, 64 S. E. 1090.

As defense in larceny. *Wiley*, 3 A. 122, 59 S. E. 438.

As defense to indictment for murder by shooting; charge to jury, upheld. *Lee*, 116/563, 42 S. E. 759.

As defense to murder; improper question to expert witness. *Flanagan*, 106/109, 32 S. E. 80.

Issue as to, raised by evidence. If not relied on as defense, judge should be so notified. *Patterson*, 124/408, 52 S. E. 534.

Admissibility of evidence on issue of. *Strickland*, 137/114, 72 S. E. 922.

Affidavit sufficient as basis of inquisition of, which did not state when, in affiant's opinion, the convict became insane. *Lee*, 118/5, 43 S. E. 994. Dissent: burden to plead and prove that insanity arose after conviction. lb. 8. Trial thereunder free from error. *Lee*, 118/764, 45 S. E. 628.

After conviction and before sentence executed, effect of. *Talley*, 141/110, 80 S. E. 556.

After passage of repealing act of 1903, judge could not entertain original application for inquisition of insanity, under act of 1897, or suspend sentence. *Cribb*, 119/298, 46 S. E. 110.

Weight of expert testimony as to. *Mitchell*, 6 A. 557, 65 S. E. 326.

At time of homicide, defenses of, made under plea of not guilty; not by special plea. *Alford*, 137/459, 73 S. E. 375.

At time of making motion, no ground for new trial. *Graham*, 102/650, 29 S. E. 582.

At time of trial, defense by special plea. *Alford*, 137/459, 73 S. E. 375.

At time of trial, issue as to. *Fullwood*, 20 A. 721, 93 S. E. 230.

At time of trial, only one trial can be demanded on plea of. Judge's discretion as to like investigation on future arraignment. *Flanagan*, 103/619, 30 S. E. 550.

Caused by use of drug, when relieves of responsibility for crime. *Strickland*, 137/115, 72 S. E. 922.

Delusional, as defense. *Taylor*, 105/777, 31 S. E. 764.

Delusional, proper instructions as to. *Minder*, 113/772, 39 S. E. 284.

Delusional, refusal to charge as to, proper under facts here. *Adams*, 117/304, 43 S. E. 703.

Erroneous charge on respect due to opinion of expert witness. *Smith*, 127/56, 56 S. E. 116.

Feigned by accused while in prison, when admissible. *Maxwell*, 146/10, 90 S. E. 279.

General and delusional; test of criminal responsibility. *Strickland*, 137/115, 72 S. E. 922.

Grant of hearing on issue of, after conviction, not a judgment that affidavit is sufficient as against demurrer. *Lee*, 118/5, 43 S. E. 994. No error in charge or refusal to charge, or otherwise. *Lee*, 118/764, 45 S. E. 628.

Inquisition of, after verdict and sentence, when no part of trial of accused. *Rawlins*, 127/28, 55 S. E. 958.

Insufficient assignment of error as to failure to charge jury on. *Cox*, 13 A. 688, 79 S. E. 909.

Jury's finding against plea of, not interfered with, unless the evidence demanded a different verdict. *Polk*, 19 A. 332, 91 S. E. 439.

Of accused (epileptic), as defense, instructions to jury were not error. *Quattlebaum*, 119/433, 46 S. E. 677.

Of convict, since sentence, affidavit of physician as to, required trial of, without further petition. Dissent: petition necessary, and allegation of affidavit insufficient. *Sears*, 112/382, 37 S. E. 443.

Of person in jail under indictment for murder, lunacy commission under civil code not authorized as to. *McGriff*, 135/259, 69 S. E. 115.

On conflict of evidence as to, verdict stands. *Cribb*, 118/316, 45 S. E. 396; *Lee*, 118/764, 45 S. E. 628.

One adjudged insane is responsible for crime committed in lucid interval. *Quattlebaum*, 119/433, 46 S. E. 677.

Opinion as to; non-expert may testify he knew accused and had seen nothing in his appearance and conduct to indicate insanity. *Herndon*, 111/178, 36 S. E. 634.

Opinions as to, of non-experts, when inadmissible. *Lewis*, 106/362, 32 S. E. 342; *Graham*, 102/650, 29 S. E. 582.

Rule as to presumption of sanity discussed. *Wilson*, 9 A. 286, 70 S. E. 1128; *Holcombe*, 5 A. 47, 54, 62 S. E. 647. Burden of rebutting. *Brown*, 148/265, 96 S. E. 435. See *Polk*, 148/34, 95 S. E. 988.

Presumption as to continuance of. *Allams*, 123/500, 51 S. E. 506.

Presumption as to continuance of, arising from judgment in proceeding de lunatico inquirendo, failure to charge jury on, no error in absence of request. *Quattlebaum*, 119/433, 46 S. E. 677.

Proof that accused was of weak mind, not admissible, where it was admitted that he was not an idiot or lunatic or insane. *Rogers*, 128/67, 67 S. E. 227, 10 L. R. A. (N. S.) 229, 119 Am. St. R. 364.

Questions as to admissibility of testimony; evidence of pregnancy at time of assault to rape, irrelevant and prejudicial. *Wilson*, 9 A. 289, 70 S. E. 1128.

"Right and wrong" test of; epilepsy overmastering the will; delusional insanity, etc. *Lee*, 116/569, 570, 42 S. E. 759.

Rule as to test of criminal responsibility discussed (ability to distinguish between right and wrong in relation to the act); error in not charging jury on exception to rule. *Wilson*, 9 A. 274, 283, 288, 70 S. E. 1128.

Rule and exception thereto, as to sufficient mental capacity. *Graham*, 102/650, 29 S. E. 582; *Battle*, 105/708, 32 S. E. 160; *Taylor*, 105/746, 31 S. E. 764.

Testimony of, when no ground of extraordinary motion for new trial. *Rawlins*, 126/96, 54 S. E. 824.

What must be shown to relieve from criminal responsibility. *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364.

When offense committed, distinct issue from insanity arising after conviction. *Sears*, 112/382, 37 S. E. 443.

Rule as to when mental delusion of one capable of distinguishing right from wrong relieves from criminal responsibility. *Allams*, 123/500, 51 S. E. 506.

Total or delusional, evidence or prisoner's statement raised no issue as to. *Floyd*, 143/287, 84 S. E. 971.

Insolvency of bank. Sufficient indictment against director. *Stapleton*, 19 A. 37, 90 S. E. 1029; *Spence*, 20 A. 61, 92 S. E. 555. Disqualification to try case, not result from relationship to depositor. *Ib.* Letters, minutes, account books, and cashier's checks admitted in evidence. *Ib.* 62.

Instrument, when necessary to set out material parts of, in indictment. *Taylor*, 123/136, 51 S. E. 326.

Insult by child, not justify battery by adult, when. *McKinley*, 121/193, 48 S. E. 917.

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Intent, allegation as to, essential in indictment for selling mortgaged property. *Alexander*, 6 A. 72, 64 S. E. 288. Intent sufficiently charged by language from which it is necessarily implied. *Livingston*, 6 A. 208, 64 S. E. 709.

Allegations of intent to steal, not essential, in indictment alleging that the accused did "embezzle, steal, and fraudulently take and carry away," etc. *Cason*, 16 A. 820, 823, 86 S. E. 644.

Considered on plea of former jeopardy, where by one act accused offended against two or more persons. *Burnam*, 2 A. 396, 58 S. E. 683.

Conclusively presumed by law; when jury may be so instructed. *Jordan*, 127/278, 56 S. E. 422.

Evidence insufficient as to. Murder. *Jordan*, 124/780, 53 S. E. 331. Rape. *Horseford*, 124/784, 53 S. E. 322. Character of accused, material on question of intent. *Culver*, 124/824, 53 S. E. 316. Intent to steal, in burglary or breaking railroad-car; indictment not demurrable. *Berry*, 124/826, 53 S. E. 316.

Fraudulent, failure to charge jury as to, as element of offense of selling mortgaged property, error. *Davis*, 7 A. 332, 66 S. E. 960.

Ignorance that liquor was intoxicating, no defense under prohibition law. *Ware*, 6 A. 578, 65 S. E. 333.

Illegal, presumed from illegal act; when error so to charge jury in larceny case, where the taking was under a claim of right. *Musgrove*, 5 A. 467, 63 S. E. 538.

Immaterial, of one charged with offense of pointing pistol. *Gossett*, 6 A. 441, 65 S. E. 162.

Implied, in language used in charge to jury ("aim pistol"). *Livingston*, 6 A. 806, 65 S. E. 812.

In keeping liquor on hand at place of business, immaterial. *Cohen*, 7 A. 5, 65 S. E. 1086. Ignorance that liquor was intoxicating, no defense under prohibition law. *Hall*, 7 A. 187, 66 S. E. 486.

Instruction not objectionable as withdrawing intent from consideration.

Belmas, 15 A. 288, 82 S. E. 819. Other acts than that charged, admissible to illustrate intent, when. **Carter**, 15 A. 343, 83 S. E. 153; **Wilensky**, 15 A. 360, 83 S. E. 276; **Reddick**, 15 A. 439, 83 S. E. 675.

Intoxication as affecting intent. **Knight**, 12 A. 112, 76 S. E. 1047; **Gaynor**, 12 A. 601, 606, 607, 77 S. E. 1072.

Intoxication or drinking as tending to show recklessness of consequences. **Roberts**, 9 A. 810-11, 72 S. E. 287. As affecting intent to steal. **Walker**, 9 A. 863, 72 S. E. 446.

Once emphasized, when sufficient in charge on pointing gun. **Winkles**, 114/449, 40 S. E. 259.

Jury must be aptly and definitely instructed on issue. **Glaze**, 2 A. 704, 58 S. E. 1126; **Cooper**, 2 A. 730, 59 S. E. 20.

Jury's finding as to intent, not set aside if supported by any evidence. **Parsons**, 16 A. 212, 84 S. E. 974.

Knowledge of falsity of representation implied in allegation that it was "false and fraudulently made" with "intent to defraud." **McLendon**, 16 A. 263, 85 S. E. 200.

"Knowing the same to be untrue," not equivalent to allegation of intent to defraud. **Lambert**, 17 A. 348, 86 S. E. 782.

Known habit, as tending to show absence of larcenous intent. **Southern Ry. Co.**, 6 A. 43, 64 S. E. 308.

No error in charging jury that every person is presumed to intend the natural and necessary consequences of his acts. **Tift**, 17 A. 663, 88 S. E. 41.

Of purchaser to use property for unlawful purpose, as affecting seller. **Kinard**, 10 A. 133, 72 S. E. 715.

Omission to charge jury as to intent, as essential element of crime defined in code section read to them, not cause for new trial, when. **Smith**, 17 A. 554, 87 S. E. 829.

Presumption as to criminal intent, of unlawful act; no harm in charge of court as to. **Brundage**, 7 A. 728, 67 S. E. 1051.

Presumption as to, from use of deadly weapon; charge must have qualification as to manner of use. **Trav. Ins. Co.**, 107/584, 34 S. E. 113.

Sufficiently charged in indictment. **King**, 103/263, 30 S. E. 30.

To deceive and defraud, sufficiently charged by alleging that representations were "fraudulently" made. **Isaacs**, 7 A. 799, 68 S. E. 338.

To defraud a particular person, when not necessary to allege. **Brazil**, 117/32, 43 S. E. 460.

To defraud, error in omitting element of, in charge as to unlawful sale of property covered by lien. **Morrison**, 111/642, 36 S. E. 902.

To defraud, sufficient allegations as to. **Sadler**, 9 A. 201, 70 S. E. 969; **Campbell**, 121/167, 48 S. E. 920. Evidence weak and unsatisfactory as to, but sufficient. *Id.*

To restore money, and repayment, not prevent conviction of embezzlement. **Orr**, 6 A. 629, 65 S. E. 582.

To murder, sufficient allegation as to. **Smith**, 126/545, 55 S. E. 475.

To steal, when sufficiently charged by alleging that the taking was done "fraudulently." **Holland**, 8 A. 202, 68 S. E. 861.

Interlineations and erasures in indictment.

Cook, 119/109, 46 S. E. 64; **Crawford**, 4 A. 797, 62 S. E. 501.

Intoxication as affecting criminality.

Odom, 13 A. 687, 79 S. E. 858; **Knight**, 12 A. 112, 76 S. E. 1047. See **Gaynor**, 12 A. 601, 606, 607, 77 S. E. 1072; **Rollestone**, 3 A. 161, 59 S. E. 442; **Holland**, 3 A. 467, 60 S. E. 205.

As affecting intent to steal. **Walker**, 9 A. 863, 72 S. E. 446.

No excuse for crime; aliter, ignorance produced by drunkenness. **Miley**, 118/274, 45 S. E. 245.

No excuse for crime; but fixed mania or insanity produced by use of drug may remove responsibility. **Strickland**, 137/115, 72 S. E. 922.

No excuse for slaying wife who used opprobrious words, etc. **Luby**, 102/639, 29 S. E. 494.

No excuse for one attempting to steal ride on train. If sober enough to try to hide, he was able to form guilty intent. *Brazzell*, 119/560, 46 S. E. 837.

Of slayer, as illustrating *quo animo*. *Dunn*, 16 A. 9, 84 S. E. 488. Drinking habit not admissible on issue as to character, when. *Ib.*

Of the accused, charge as to, not error. *Phillips*, 121/358, 49 S. E. 290.

Voluntary, no excuse for. Courts will not inquire if liquor was impure or drugged. *Cribb*, 118/316, 45 S. E. 396; *Middlebrooks*, 118/773, 45 S. E. 607.

Voluntary, no excuse for crime. *Dickens*, 137/523, 73 S. E. 826. Proper charge. *Brown*, 13 A. 370, 79 S. E. 177. No excuse for homicide. *Stephens*, 139/594, 77 S. E. 875; *Brown*, 148/265, 96 S. E. 425.

Within curtilage of another's dwelling; error in charge of court in expressing opinion as to facts. *Brown*, 6 A. 538, 64 S. E. 1119.

On highway; indictment too indefinite; highway should be designated or described. *Burkes*, 7 A. 39, 65 S. E. 1091.

On highway, conviction of, no bar to prosecution for firing pistol on highway on Sunday. *Collier*, 8 A. 371, 69 S. E. 29.

In residence of another; house properly alleged to be husband's, not wife's. *Patterson*, 8 A. 454, 69 S. E. 591.

At place of divine worship; proper instructions to jury. *Harrell*, 9 A. 625, 71 S. E. 1030.

Invasion of premises by riotous mob; when justification for shooting. *Rhodes*, 10 A. 68, 72 S. E. 518.

Inveigling child, indictment for, when need not negative guardian's consent. *Pruitt*, 102/688, 29 S. E. 437.

When indictment need not allege names of the parents, or name of the father. Fraudulently decoying or enticing completes offense; though no force or malice appear. *Arrington*, 3 A. 30, 59 S. E. 207.

Irregularity on trial, when counsel knowing must object to, before verdict. *Burke*, 148/230, 96 S. E. 326.

Presumption of harm from. *Martin*, 10 A. 456-7, 73 S. E. 686.

Joinder of offenses in one indictment. *Jones*, 2 A. 433, 58 S. E. 559; *Sutton*, 124/817, 53 S. E. 381. When no misjoinder of two offenses in one count. *Berry*, 124/825, 53 S. E. 316.

In accusation. *Williams*, 107/693, 33 S. E. 641.

Of distinct offenses, demurrer as to, did not raise question. *Wells*, 118/557, 45 S. E. 443. One count may embrace several acts. *Thomas*, 118/774, 45 S. E. 622; *Bishop*, 118/799, 45 S. E. 614.

Of different offenses, when proper, and when not. *Belcher*, 19 A. 439, 91 S. E. 879; *Sewell*, 23 A. 765, 99 S. E. 320.

Of different offenses in one count, when proper. *Mitchell*, 6 A. 554, 65 S. E. 326; *Lepinsky*, 7 A. 287, 288, 66 S. E. 965; *Lawrence*, 10 A. 788, 74 S. E. 300.

Of different offenses in one count; forgery and uttering the forged paper. *Nalley*, 11 A. 15, 74 S. E. 567; *Blount*, 11 A. 239, 74 S. E. 1099.

Of different kinds of misdemeanors, proper (carrying concealed weapon, and carrying pistol without license). *Butler*, 18 A. 201, 89 S. E. 178; *Bishop*, 21 A. 236, 94 S. E. 49.

Two offenses not joined, where facts constituting a second offense were alleged merely as matter of inducement, describing the manner of committing the main offense. *Lawrence*, 10 A. 788, 74 S. E. 300.

Indictment joining actual perpetrator and those aiding or abetting misdemeanor, or against one alone, proper. *Loeb*, 6 A. 23, 64 S. E. 338; *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

In indictment of persons joining in one false affidavit. *Norton*, 5 A. 586, 63 S. E. 662.

Not necessary in case of officer of corporation declaring unlawful dividend. *Cabaniss*, 8 A. 129, 68 S. E. 849.

Indictment treated as separate charge against each of defendants jointly indicted. **Chapman**, 148/532, 97 S. E. 546.

Joining receiver of stolen goods and principal offender in same indictment, not legal. **Smiley**, 23 A. 317, 98 S. E. 125.

Judge may interpose *ex mero motu*, to preserve fair and orderly conduct of trial. **O'Dell**, 120/152, 47 S. E. 577.

Indication by, of unfavorable opinion as to character of accused, by questions to witness, error requiring reversal. **Jaques**, 111/832, 36 S. E. 104.

Motive of, to aid prisoner and his counsel, not avoid necessity of correcting error. **Alexander**, 114/268, 40 S. E. 231.

Remarks of, in presence of jury, when not require new trial. **Vanderford**, 126/753, 55 S. E. 1025.

Suggestion by, to solicitor-general as to introduction of evidence, not error. **Kearney**, 101/803, 29 S. E. 127, 65 Am. St. R. 344.

Judgment of conviction not void (though erroneous), where evidence shows crime different from that charged. **Harrell**, 139/340, 77 S. E. 160. See **Saffold**, 139/121, 76 S. E. 858.

Kidnapping, indictment for, when need not negative consent of guardian. **Pruitt**, 102/688, 29 S. E. 437.

Of child under age, statute as to, defines two offenses. Essential allegations of indictment. **Sutton**, 122/158, 50 S. E. 60.

Knowledge, jury authorized to find that defendant had, as to liquor on her premises. **Reynolds**, 23 A. 369, 98 S. E. 246.

"Knucks," carrying concealed; indictment sufficient. **Nixon**, 121/144, 48 S. E. 966.

Labor-contract, indictment under act of 1903 as to cheating, etc., by violating, sufficient. **Holt**, 5 A. 184, 62 S. E. 992.

One count may embrace various sums of money fraudulently procured at different times under, in violation of act of 1893. **Young**, 4 A. 827, 62 S. E. 558.

Laborer, enticing away; indictment sufficient. **Stephens**, 22 A. 123, 95 S. E. 537.

Attempt to prevent from remaining in employment; indictment sufficient. **Robbins**, 119/570, 46 S. E. 834.

Language of code, indictment in, sufficiency of. **Stone**, 118/717, 45 S. E. 630, 98 Am. St. R. 145; **Arrington**, 3 A. 30, 59 S. E. 207; **Anderson**, 2 A. 1, 58 S. E. 40; **Cohen**, 104/735, 30 S. E. 932; **Minter**, 104/748, 30 S. E. 989. See **Hudson**, 104/723, 30 S. E. 947.

Not sufficient, when. **Roughlin**, 17 A. 207, 86 S. E. 452.

Rule as to sufficiency of accusation in language of code, applied to accusation of unlawful sale of crop. **Bell**, 14 A. 425, 81 S. E. 253.

Exceptions to rule that indictment defining offense in language of code is sufficient. **Carter**, 12 A. 432, 78 S. E. 205.

Of indictment is to be interpreted liberally in favor of the State. **Green**, 109/540, 35 S. E. 97.

Larceny; affidavit and accusation sufficient here. **Brown**, 109/570, 34 S. E. 1031.

Attempt to commit; indictment insufficient in not alleging some overt act done towards its commission. **Wilburn**, 22 A. 613, 97 S. E. 87.

Ownership of the stolen property, what must be alleged as to. Presumption that a named "company," alleged to be owner, is a corporation. **Mattox**, 115/219, 41 S. E. 709.

Ownership properly laid in husband in charge of plantation for wife, instead of in superintendent. **Jackson**, 21 A. 146, 94 S. E. 55.

Ownership properly alleged to be in one who was in possession as agent of owner. **Bone**, 121/150, 48 S. E. 986.

Ownership of stolen property must be alleged, and must be proved as laid. **Horton**, 21 A. 120, 93 S. E. 1012.

Of growing crop; ownership not in cropper, and should be alleged in landlord. **Betts**, 6 A. 773, 65 S. E. 841.

Ownership of crop, properly laid in landlord and cropper jointly, when. **Randolph**, 16 A. 328, 85 S. E. 257.

Ownership, necessary allegations as to. **Randolph**, 16 A. 328, 85 S. E. 258. Ownership may be laid in person having lawful possession, though agent or bailee. *Id.*

Ownership laid in one lawfully in possession (one of joint owners). **Waters**, 15 A. 342, 83 S. E. 200.

Of cattle, proper form of indictment for. **Sneed**, 16 A. 351, 85 S. E. 354.

Of papers relating to title (Penal Code § 163); ownership need not be alleged. **Hanson**, 13 A. 372, 7 S. E. 176. Decisions as to when necessary to allege ownership distinguished. *Id.*

Indictment with count charging larceny, and count charging the receiving of stolen property; court could strike latter without quashing the whole. **Martin**, 10 A. 795, 74 S. E. 304.

Indictment may properly allege ownership in agent having lawful possession, but not in servant having mere custody for master. **Jackson**, 21 A. 146, 94 S. E. 55.

Indictment for, must allege ownership of property, if known. If laid in a partnership, names of the partners must be alleged. **Buffington**, 124/24, 52 S. E. 19.

Indictment designating the offense as "larceny," instead of "simple larceny," sufficient, when. **Sneed**, 16 A. 351, 85 S. E. 354.

Defect in accusation in not sufficiently describing property should be taken advantage of by demurrer in writing before pleading to the merits. **King**, 117/39, 43 S. E. 426.

Sex need not be alleged in indictment for cattle-stealing; different rule under statutory definition of horse-stealing. **Gibson**, 7 A. 693, 67 S. E. 838; **Burch**, 4 A. 384, 61 S. E. 503.

"Bills," in indictment for stealing money, "to wit, two twenty-dollar bills," held to mean bank bills. **Johnson**, 119/257, 45 S. E. 960.

Description and value of money taken, sufficient allegation. **Maxwell**, 9 A. 875, 72 S. E. 445.

Intent to steal, when sufficiently charged by alleging that the taking was done "fraudulently." **Holland**, 8 A. 202, 68 S. E. 861.

Affidavit and accusation sufficient. **Taylor**, 120/484, 48 S. E. 158. Description of property, sufficiency of. **Melvin**, 120/490, 48 S. E. 198; **Bone**, 120/866, 48 S. E. 356. Value of each article stolen should be separately alleged, but may be stated in aggregate. **Bone**, 120/867, 48 S. E. 356.

Description sufficient; "one cream-colored jersey cow, of the personal goods of [prosecutor], and of the value of \$40." **Gibson**, 7 A. 692, 67 S. E. 838. "Cow" denotes female animal, horned, with cloven hoof. *Id.*

Description of, when not essential. **Kidd**, 101/529, 28 S. E. 990.

Description of stolen seed-cotton by giving weight and value, insufficient. **Bright**, 10 A. 17, 72 S. E. 519.

Description of stolen property, "one metal church bell," sufficient, as against demurrer here. **Gibson**, 13 A. 67, 78 S. E. 829.

Description of stolen property, as "one black and white male hog, of the personal goods" of a named person, sufficient, in indictment. **Harvey**, 121/590, 49 S. E. 674.

Description of stolen money, when sufficient. **Cannon**, 125/785, 54 S. E. 692.

Description of stolen hogs as "one black barrow hog," and "one black and white spotted female hog," with values and owner's name, sufficient. **Garrett**, 21 A. 801, 95 S. E. 301. See **Geiger**, 21 A. 75, 93 S. E. 1027.

Description of stolen goods in indictment, rule as to when sufficient. **Adams**, 21 A. 152, 94 S. E. 82.

Demurrer for want of full and accurate description of horse, presented no question. **Tucker**, 114/61, 39 S. E. 926.

Description of property as a lot of cord wood, insufficient. **Walthour**, 114/75, 39 S. E. 872.

Description of horse, in indictment charging theft of, what sufficient. *Teal*, 119/103, 45 S. E. 964.

Description of bales of cotton, sufficient in indictment for. *White*, 19 A. 230, 91 S. E. 280.

Description sufficient; "a certain black and white milk cow of the value of \$25, of the personal goods of" a person named. *Wheeler*, 18 A. 15, 88 S. E. 712.

Place from which property was stolen (except county) generally need not be alleged in indictment for simple larceny. *Gibson*, 13 A. 68, 78 S. E. 829.

Indictment for, may include theft of several articles of different owners at one time. *Dean*, 9 A. 571, 71 S. E. 932.

Larceny after trust. Allegations sufficient. *Hamilton*, 11 A. 41, 74 S. E. 446.

Sufficiency of allegations in indictment for. *Boyd*, 111/804, 35 S. E. 675.

Indictment sufficiently specific. *Lewis*, 17 A. 667, 87 S. E. 1087. Demand need not be alleged or proved, to sustain conviction under § 192 of Penal Code as amended by act of 1910. *Ib.*

Ownership should be alleged. *Guyton*, 12 A. 562, 77 S. E. 830. When not necessary to allege ownership. *Grier*, 18 A. 738, 90 S. E. 490.

Indictment sufficient. *McCrary*, 11 A. 787, 76 S. E. 163. Meaning of "any other bailee," in code section as to. *Ib.*

Indictment good. *Birt*, 1 A. 150, 57 S. E. 965; *Keys*, 112/392, 37 S. E. 762, 81 Am. St. R. 63.

Offenses defined in §§ 189, 192, are kindred and may be charged in separate counts of the same indictment. Count construed as based on first clause of § 189; under this clause demand need not be alleged and proved. General verdict of guilty upheld. *Innes*, 19 A. 271, 91 S. E. 339.

Indictment charging fraudulent conversion of money by defendant to his own use was based on § 192, not § 189, of Penal Code (1910), where it was alleged to that the money was intrusted "for the purpose of applying

the same for the benefit of" the person intrusting it. *McCoy*, 19 A. 32, 90 S. E. 737.

In not applying property to use of one other than person delivering it; indictment should allege ownership. *Norfleet*, 9 A. 853, 72 S. E. 447.

Larceny from house; accusation sufficient, under Penal Code, § 176. *Patterson*, 17 A. 341, 86 S. E. 782.

Properly included in separate count of indictment charging burglary. *Scott*, 14 A. 806, 82 S. E. 376.

Sufficiency of indictment for. *Jefferson*, 117/710, 45 S. E. 61.

Sufficient description of money stolen. *Frederick*, 127/35, 55 S. E. 1044.

Penalty for. When essential to allege that offense was privately committed. *Jones*, 146/187, 91 S. E. 67.

Effect of omission of "privately" from indictment. *Kimbrough*, 101/583, 29 S. E. 39; *Jenkins*, 13 A. 696, 79 S. E. 861.

Classes of, and penalty. Indictment good as against motion to arrest judgment. *Heard*, 120/848, 48 S. E. 311. Indictment sufficient as against several grounds of demurrer. *Bone*, 120/867, 48 S. E. 356.

Larceny from person; failure to allege that the taking was "without the knowledge" of the person from whom the thing was taken; no ground for arrest of judgment, when. *Chislon*, 19 A. 609, 91 S. E. 923.

Sufficiently charged without alleging ownership of the article taken. *Hugo*, 110/768, 36 S. E. 60.

Law violated, indictment should specify. *Brown*, 104/529, 30 S. E. 837.

Lewdness; misjoinder of offense of keeping lewd house and offense of open lewdness and notorious public indecency, in indictment. *Lasseter*, 17 A. 323, 86 S. E. 743.

Allegations as to hiring out wife for immoral purposes, not sufficiently specific. *Lasseter*, 17 A. 323, 86 S. E. 743.

Joinder of offenses; lewd and disorderly house; indictment specific and definite. *Jones*, 2 A. 433, 58 S. E. 559.

Libel; whether charge of breaking promise was libelous, a jury question. **Michael**, 5 A. 334, 63 S. E. 228.

License tax, no authority to violate penal law. **Hopkins**, 122/583, 50 S. E. 351, 69 L. R. A. 117, 2 Ann. Cas. 617.

Limitations, bar of statute of, not relieved by allegation here, as to quashed indictment. **Copeland**, 14 A. 109, 80 S. E. 211.

Indictment barred where its date was second anniversary of misdemeanor charged. **McLendon**, 14 A. 274, 80 S. E. 692.

See **Criminal Law**, 1, catchwords **Limitation**, **Time of offense**.

Liquor, indictment for unlawful possession of, sufficient. **English**, 147/515, 94 S. E. 884.

Place of business sufficiently described as defendant's place of business in the county of the prosecution. **Hall**, 8 A. 748, 70 S. E. 211. More definite description of public place required. **Hall**, 8 A. 751, 70 S. E. 211.

Indictment too general to cover violation of local liquor law. **O'Brien**, 109/52, 35 S. E. 112.

Liquor-selling (peach brandy) in violation of local option law, indictment for, need not allege valuable consideration. **Howell**, 124/698, 52 S. E. 649.

When not necessary for indictment to negative exception to statute. **Oglesby**, 121/602, 49 S. E. 706. See **Seale**, 121/745, 49 S. E. 740.

To agent may be alleged as to principal. **Kemp**, 120/158, 47 S. E. 548, 102 Am. St. R. 138.

Sufficiency of accusation as to date of offense. **Newsome**, 2 A. 392, 58 S. E. 672.

On election days; indictment sufficient. **Newman**, 101/534, 28 S. E. 1005.

In violation of local option law, indictment for, need not allege adoption of law by popular vote. **Woodard**, 103/498, 30 S. E. 522.

In locality in which dispensary has been established; suggestion as to indictment for; whether Penal Code, §

428, as amended, applies to. **Barker**, 117/433, 43 S. E. 744.

Indictment sufficient though not showing that it was based on a local law. **Griffin**, 115/577, 41 S. E. 997.

Indictment sufficiently specific as to violation of local act fixing license fee. **Glover**, 126/594, 55 S. E. 592.

Indictment good, as against demurrer. Conviction sustained, by evidence of sale of intoxicant without license. Matter of defense as to sale of domestic wine. **Sowell**, 126/105, 54 S. E. 916.

Indictment for, when too general to cover violation of local law as to. **O'Brien**, 109/51, 35 S. E. 112.

Indictment for, when not double. Need not allege the wine is not domestic. **Kemp**, 120/158, 47 S. E. 548, 102 Am. St. R. 138.

Indictment for, may charge collectively sale of several kinds; and need not state to whom sold, nor negative that wines sold were domestic. **Hancock**, 114/439, 40 S. E. 317.

Indictment sufficient, not specifying particular kind, charging sale in conjunctive, and adding "other drinks to prosecutor unknown." **Maddox**, 118/32, 44 S. E. 806.

Indictment for, in county where special statute regulates grant of licenses to sell. **Kemp**, 120/157, 47 S. E. 548, 102 Am. St. R. 138.

Conviction not arrested because indictment failed to allege that the liquors were not sold in a certain town. **Griffin**, 115/577, 41 S. E. 997.

Allegation that sale was not by practising physician, not necessary in indictment, under statute here containing exception as to physicians. **Oglesby**, 121/602, 49 S. E. 706.

Allegation that consideration of sale was "valuable," sufficient, without stating what it was. **Taylor**, 126/557, 55 S. E. 474.

Accusation silent as to name of buyer, precise consideration and other details, sufficient. **Shuler**, 125/784, 54 S. E. 689.

Name of person to whom sold need not be alleged. *Barlow*, 127/64, 56 S. E. 131.

Accusation here was intended to charge violation of Penal Code, § 450; word "whisky" treated as surplusage; conviction not upheld by proof of sale of corn whisky. *Barker*, 117/429, 43 S. E. 744.

Accusation for, not supported by affidavit of selling whisky. *Blake*, 112/537, 37 S. E. 870.

Without license, indictment for, bad as to district under local prohibitory law. *Brown*, 104/525, 30 S. E. 837.

Without license, demurrer to indictment for, on various grounds, overruled. *Wells*, 118/556, 45 S. E. 443.

Without license, indictment for, where sale is wholly prohibited, not good. *Moore*, 126/414, 55 S. E. 327.

Without license; what sufficient accusation. *Shuler*, 125/783, 54 S. E. 689.

Accusation may charge, in one count, and in another soliciting orders for. General verdict of guilty not illegal because count on which based is not specified. *Williams*, 107/693, 33 S. E. 641.

Indictment not too indefinite as to kind of intoxicating drinks sold. *Howe*, 10 A. 215, 73 S. E. 46.

Within three miles of church or schoolhouse, indictment for, need not negative exception as to town or city. *Hicks*, 108/749, 32 S. E. 665.

List of witnesses furnished on demand, sufficient, where it included those named on indictment. Continuance for surprise not granted because of introduction of others. Indictment presumed founded solely on testimony of witnesses named thereon. *Palmer*, 23 A. 84, 97 S. E. 460.

Loan at interest in excess of 5 per cent. per month, indictment sufficient. *King*, 9 A. 714, 72 S. E. 176.

Locker club, prosecution of, for failing to register and pay tax; indictment, not accusation in city court, proper mode of proceeding against incorporated club. *Progress Club*, 12 A. 174, 76 S. E. 1029; *Brunswick Oglethorpe Club*,

12 A. 180, 76 S. E. 1034. See *Central Ga. Power Co.*, 12 A. 260, 77 S. E. 107. Loss, whether shown by allegations. *Strickland*, 14 A. 592, 81 S. E. 819.

Malpractice, indictment for; service of copy before laid before grand jury. *Dyer*, 7 A. 58, 65 S. E. 1089.

By justice of peace, insufficient indictment for. *Hohenstein*, 125/536, 55 S. E. 238.

By magistrate in collection of costs; indictment not sufficient. *Mitchell*, 17 A. 405, 87 S. E. 154.

Manner of commission; indictment sufficiently definite and particular as to, as against demurrer. *Walker*, 141/525, 81 S. E. 442.

Manslaughter. Form of indictment for. *Williams*, 13 A. 84, 85, 78 S. E. 854.

Indictment for involuntary manslaughter by unlawful administration of drug, sufficient. *Silver*, 13 A. 722, 79 S. E. 919.

Indictment for involuntary manslaughter, alleging unintentional homicide, need not allege expressly that it was without malice. *Hayes*, 11 A. 372, 75 S. E. 52.

Involuntary, in commission of a lawful act (physician administering chloroform); indictment demurrable. *Roughlin*, 17 A. 205, 86 S. E. 452.

Error on law of murder (as to malice), held not prejudicial to one convicted of manslaughter. *Dunwoody*, 23 A. 93, 97 S. E. 561.

Essentials of indictment for involuntary manslaughter. *Roughlin*, 17 A. 208, 86 S. E. 452.

Opinion not intimated that verdict of manslaughter should be rendered. *Gunn*, 23 A. 545, 99 S. E. 62.

Proper to submit issue, where any deduction from evidence or statement of accused would tend to show, or raise doubt as to grade of homicide. *Smith*, 23 A. 77, 97 S. E. 474; see *Gunn*, 23 A. 545, 99 S. E. 62; *Sharp*, 23 A. 772, 99 S. E. 472.

Striking words from indictment, so as to change the homicide charged from murder to voluntary man-

slaughter. *Williams*, 13 A. 84, 85, 78 S. E. 854.

Submission of issue, held no cause for new trial to one convicted of this offense, when State's evidence made a case of murder and none of the evidence or the prisoner's statement would justify acquittal. *Canady*, 23 A. 375, 98 S. E. 188.

Theory based only on statement of accused, no error in not submitting, without request. *Tyson*, 23 A. 20, 97 S. E. 458.

Marriage illegal, not excused by mistaken belief as to divorce. *Jackson*, 21 A. 823, 95 S. E. 631.

Maxim that it is better that ninety-nine guilty escape than that one innocent man should suffer, not proper to give in charge to jury. *Mixon*, 123/582, 51 S. E. 580, 107 Am. St. R. 149.

Mayhem, whether justification for homicide; charge of court as to, considered. *Love*, 14 A. 49, 50, 80 S. E. 209.

Medical practitioner, not registered; indictment should show he resided in county in which he failed to register; he is not required to register outside county of his residence. *Jones*, 8 A. 411, 69 S. E. 315. Indictment not required to negative exceptions in statute as to. *Ib.*

Medicine, unlawful practice of; indictment good. *Blaleck*, 112/338, 37 S. E. 316.

Minor, sale of liquor to; consent of guardian not negated, indictment bad. *Pruitt*, 102/690, 29 S. E. 437.

Violation by, of "labor contract act" of 1903; defense that performance was prevented by father. *Sheppard*, 9 A. 234, 70 S. E. 972.

Misadventure, homicide by, as defense. *Roberts*, 138/815, 76 S. E. 361.

Without evil design or intent, or culpable neglect, no crime; aliter, where intent to murder. *Godbee*, 141/516, 81 S. E. 876.

Misapprehension, though honest, of meaning of statute, no excuse for crime. *Fraser*, 112/13, 37 S. E. 114.

Misdemeanor, as descriptive of offense, when sufficient. *Mason*, 3 A. 353, 60

S. E. 4; *Wellmaker*, 3 A. 791, 800, 60 S. E. 464; *Hunter*, 4 A. 579, 61 S. E. 1130.

As provocation for assault with deadly weapon; charge of court as to, considered. *Love*, 14 A. 49, 50, 80 S. E. 209.

No constitutional guaranty of indictment by grand jury before trial for. *Fleming*, 11 A. 581, 75 S. E. 914.

Misfortune or accident, no issue as to, in this homicide. *Robinson*, 135/217, 69 S. E. 113. None raised here. *Whitfield*, 135/248, 69 S. E. 114.

Misjoinder of offenses. *Lasseter*, 17 A. 323, 86 S. E. 743.

Of counts in indictment. *Williams*, 119/181, 45 S. E. 989.

Misnomer (Rawlin for Rolin) not shown. *Roland*, 127/401, 56 S. E. 412. What plea must allege. *Ib.* 402.

Witt for Wid, and omission of middle initial; plea not good. *Veal*, 116/589, 42 S. E. 705.

Judge's decision on plea of, based on interpretation of handwriting in indictment, final. *Gunn*, 10 A. 819, 74 S. E. 312.

Plea of, must be filed before arraignment. Indictment not attacked for, after conviction. *Pulliam*, 140/864, 80 S. E. 315.

Mistake, as defense. *Ware*, 6 A. 578, 65 S. E. 333.

As defense to charge of furnishing liquor to minor. *Askew*, 4 A. 446, 61 S. E. 737.

Mistrial, because of argument expressing counsel's opinion arising from evidence, not granted. *Floyd*, 143/287, 84 S. E. 971.

Because of disqualification of juror; plea of former jeopardy stricken. *Armor*, 125/3, 53 S. E. 815. On account of improper argument, error in not declaring. *Caesar*, 125/6, 53 S. E. 815.

In absence of prisoner, confined in jail, ground for plea of former jeopardy. *Bagwell*, 129/170, 58 S. E. 650.

Based on necessity moral or physical. Subject discussed. Error of judge, when no cause for. *Oliveros*, 120/237, 47 S. E. 627, 1 Ann. Cas.

114. When should be granted, on motion for improper arguments of counsel. *Minor*, 120/490, 48 S. E. 198. Juror allowed to leave room with bailiff, when no cause for. *May*, 120/497, 48 S. E. 153.

Is no final judgment for writ of error. *Starnes*, 138/341, 75 S. E. 104.

Demonstration here was not such as to require. *Sullivan*, 121/186, 48 S. E. 949.

For improper argument, when not to be declared. *Wallace*, 126/749, 55 S. E. 1042; *Rouse*, 136/367, 71 S. E. 667.

On account of improper remark in argument, when not granted. *Goodman*, 122/111, 49 S. E. 922.

For improper statements of officers in presence of jury, when not granted. *Rawlins*, 124/32, 33 S. E. 1; *Ellis*, 124/91, 52 S. E. 147; *Walker*, 124/98 52 S. E. 319.

For inflammatory speech of counsel, when no error in refusing. *Brown*, 148/266, 96 S. E. 435.

For unfair and prejudicial argument provoked by counsel for accused. *Smoot*, 146/76, 90 S. E. 713. See *Glawson*, 146/39, 90 S. E. 955.

For use of improper language, when not granted. *Lee*, 116/563, 42 S. E. 759. Remarks of judge, not applicable to the case, when no cause for. *Perry*, 116/850, 43 S. E. 253. So as to suspension to receive grand jury presentments. *Ib.*

Judge's statement as to what was testified, when no ground for. *Raven*, 125/58, 53 S. E. 816.

On excusing juror and completing panel, no error. *Cason*, 134/786, 68 S. E. 554.

Legally declared on Monday morning before court of other county in same circuit began its session. *Perdue*, 134/301, 67 S. E. 810. Refusal of, on improper argument, when no error. *Brooks*, 134/784, 68 S. E. 504.

Length of time before declaring; in discretion of judge. *Driver*, 112/229, 37 S. E. 400.

No error in not declaring. *Hall*, 141/7, 80 S. E. 307; *Frank*, 141/246, 280, 80 S. E. 1016.

Not legally declared in absence of accused out on bond when verdict received. *Hill*, 118/22, 44 S. E. 820.

For improper argument. *Sims*, 118/774, 45 S. E. 621. For expression of opinion on evidence, by judge. *Oliveros*, 118/776, 45 S. E. 596.

On account of woman crying, not declared; assignment of error insufficient. *Clements*, 123/547, 51 S. E. 595.

Party at whose instance mistrial was declared cannot take advantage of error therein; plea of former jeopardy overruled. *Nixon*, 121/145, 48 S. E. 966.

Refusal of offer to declare, followed by refusal to direct verdict of acquittal. *Gale*, 135/351, 69 S. E. 537.

Remarks of counsel, as ground for. *Jones*, 123/129, 51 S. E. 312; *Dickerson*, 121/136, 48 S. E. 942; *Barrow*, 121/188, 48 S. E. 950.

Right to declare, where jury unable to agree as to offense, submitted by charge on evidence. *Darsey*, 136/502, 71 S. E. 661.

When no bar to subsequent trial. *Bagwell*, 129/171, 58 S. E. 650.

When not declared on account of prosecuting attorney's remark as to witness. *McMillan*, 128/25, 57 S. E. 309.

Without consent and without legal necessity, acts equivalent to, entitling accused to absolute discharge. *Hopkins*, 6 A. 403, 65 S. E. 57.

Money, description of, and allegation as to value, sufficient. *Maxwell*, 9 A. 875, 72 S. E. 445.

Stolen; misdescription of bills, not material here. *Smith*, 8 A. 458, 69 S. E. 598.

"Greenback money" held to mean currency of the United States. *Jones*, 10 A. 59, 72 S. E. 518.

Mortgaged property, fraudulent sale of; indictment sufficient. *Richter*, 4 A. 274, 61 S. E. 147.

Fraudulently obtaining credit by representing that it is unincumbered;

indictment should set forth nature and character of incumbrances, *McLendon*, 16 A. 263, 85 S. E. 200.

Offense of selling; accusation not good, without allegation of fraudulent intent. *Alexander*, 6 A. 72, 64 S. E. 288. Committed though the lien was recorded. *Brown*, 6 A. 329, 64 S. E. 1001.

Wrongful sale of; indictment not sufficient in description. *Hampton*, 124/3, 52 S. E. 19.

Motion to direct verdict, not proper mode of raising question as to constitutionality of statute. *Cohen*, 7 A. 5, 65 S. E. 1096.

To quash accusation overruled, matter for direct exception, not ground for new trial. *Cleveland*, 109/265, 34 S. E. 572.

To quash; rule for testing sufficiency of indictment to withstand such a motion. *Dukes*, 9 A. 537, 71 S. E. 921.

For new trial, not mode for attacking indictment. *Moses*, 123/504, 51 S. E. 503; *Womble*, 107/666, 33 S. E. 630; *Cleveland*, 7 A. 622, 67 S. E. 696; *Hunter*, 7 A. 668, 67 S. E. 894; *Bryant*, 8 A. 389, 69 S. E. 121.

To set aside judgment; when proper procedure. *Lyons*, 7 A. 52, 66 S. E. 149.

To set aside judgment, not remedy of one convicted under void judgment. *McDonald*, 126/536, 55 S. E. 235.

In vacation to set aside judgment, not entertained. *Haskens*, 114/837, 40 S. E. 997.

To set aside judgment, made after motion for new trial; effect of. *Ezzard*, 11 A. 31, 74 S. E. 551.

To set aside at subsequent term and after affirmance by Supreme Court. *Rawlins*, 127/24, 55 S. E. 958.

Motive for carrying weapon concealed, when immaterial. *Edwards*, 126/89, 54 S. E. 809.

For murder; approved instruction to jury. *Barnett*, 136/65, 70 S. E. 868.

Municipal ordinance, indictment or accusation of petty offense against, not necessary. *Pearson*, 124/701, 52 S. E. 751, 4 Ann. Cas. 501.

Murder; adultery as defense, meaning of "just over," in decision, when referring to the time of the adultery. *O'Shields*, 125/311, 314, 54 S. E. 120.

By choking, beating and drowning, allegation not demurrable. *Walker*, 141/525, 81 S. E. 442.

"By choking and by other means to the jurors unknown," indictment charging, not demurrable for indefiniteness as to manner of killing. *Hicks*, 105/627, 31 S. E. 579.

Indictment for, need not specifically allege that the deceased was a human being; that fact may be implied from the name. *Sutherland*, 121/591, 49 S. E. 781.

Indictment for, not subject to objections raised. *Rawlins*, 124/31, 52 S. E. 1; *Kettles*, 145/6, 88 S. E. 197.

Indictment sufficient; unintelligible part disregarded, as surplusage. *Mixon*, 7 A. 805, 68 S. E. 315.

Intent sufficiently alleged. *Smith*, 126/545, 55 S. E. 475.

Jointly committed with gun; indictment not subject to demurrer on grounds taken. *Brannon*, 140/787, 80 S. E. 7.

Indictment for, endorsed "true bill for voluntary manslaughter," effect of; no ground for arrest of judgment on conviction of voluntary manslaughter. *Williams*, 13 A. 83, 78 S. E. 854.

Indictment for, need not allege what part of body was wounded, nor the size or weight of iron used in beating. *Bowens*, 106/860, 32 S. E. 666.

Indictment charging shooting with gun need not allege it was loaded with powder and leaden balls. *Cook*, 119/108, 46 S. E. 64.

Striking words from indictment, so as to change the offense charged from murder to voluntary manslaughter. *Williams*, 13 A. 84, 85, 78 S. E. 854.

Mutual defense, right of brothers as to. *Sheffield*, 16 A. 287, 85 S. E. 253; *Swain*, 15 A. 445, 83 S. E. 642; *Taylor*, 13 A. 689, 79 S. E. 862; *Mosley*, 11 A. 5, 7, 74 S. E. 569.

Name, errors on trial of plea of misnomer, not proper grounds for motion

for new trial in the main case. **McDow**, 113/699, 39 S. E. 295.

Given offense in indictment, not treated as fixing its true character; allegations control as to this. **Lummus**, 17 A. 414, 87 S. E. 147; **Alexander**, 122/174, 50 S. E. 56; **Sneed**, 16 A. 351, 85 S. E. 354; **Edwards**, 22 A. 796, 97 S. E. 205.

Identity of, as indicating identity of person, where the same appears in different parts of a record. **Crawford**, 4 A. 508, 61 S. E. 886.

Identity of person, not of name, as a test of whether indictment applies to prisoner. **Biggers**, 109/106, 34 S. E. 210.

Importing corporation. **Gray**, 6 A. 428, 65 S. E. 191.

Indictment where name of accused not known. **Eaves**, 113/755, 39 S. E. 318.

Indictment with alias; proof that accused is commonly known by either name, sufficient. **Jenkins**, 4 A. 859, 62 S. E. 574.

In indictment, "Maria," no material variance in proof that the person in question was named "Marie." **Watkins**, 18 A. 500, 89 S. E. 624.

"Biggers," "Bickers," are idem sonans; other instances given. **Biggers**, 109/105, 34 S. E. 210.

Difference between indictment and proof, as to name of church, not material here. **Edwards**, 121/591, 49 S. E. 674. As to name of corporation. **Smith**, 121/618, 49 S. E. 677.

In evidence ("Son" Field), not treated as referring to the accused (Henry Field). **Field**, 126/573, 55 S. E. 502.

In indictment, not real name of person with whom the crime was committed, no ground for new trial, when he was also known and called by that name. **Whittington**, 121/193, 48 S. E. 948.

Of agent through whom unlawful sale was made need not be given, when. **Harker**, 8 A. 93, 68 S. E. 650.

Of agent of defendant, material when alleged. **So. Express Co.**, 23 A. 67, 97 S. E. 550.

Initials of accused's Christian name used in indictment, sufficient, plea of misnomer not good. **Eaves**, 113/750, 39 S. E. 318.

Of decedent given with initial instead of in full, no ground of demurrer to presentment. **Hudgins**, 136/699, 71 S. E. 1065.

Of grand juror, clerical error in writing, does not vitiate indictment. Correction by testimony. **Bexley**, 141/1, 80 S. E. 314.

Of offense need not be given in indictment describing it. **Lipham**, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Of owner or person in possession need not be given in indictment for maliciously killing hog. **Stokes**, 14 A. 522, 81 S. E. 595.

Of person killed, being the same as that of his father, omission of "Jr." from indictment inconsequential. **Taylor**, 138/826, 76 S. E. 347.

Of person killed, variance as to, between indictment and evidence; when not material. **Powell**, 9 A. 614, 71 S. E. 1013.

Of person to whom wife was hired out for immoral purposes, not given in indictment; ground for demurrer. **Lasseter**, 17 A. 323, 86 S. E. 743.

Of assistant of physician charged with negligently permitting assistant to administer chloroform should have been given in indictment. **Roughlin**, 17 A. 206, 86 S. E. 452.

Of purchaser need not be stated in indictment for sale of liquor. **Daniel**, 11 A. 799, 76 S. E. 162; **Pines**, 15 A. 348, 83 S. E. 198; **Finch**, 6 A. 338, 64 S. E. 1007. But if stated, proof of sale to another is irrelevant, unless he was agent for the person named, and the defendant knew it. *Ib.*

Plea of misnomer, by one indicted with an alias, must aver he has never been known by either name set out, and neither is his name. **Stinchcomb**, 119/442, 46 S. E. 639.

Effect of failure of indictment to give names of others engaged with the

accused in riot or conspiracy, or to allege that they are unknown. **Martin**, 115/255, 41 S. E. 576.

Under an indictment for setting fire to the mill etc. of the "Tifton Knitting Mills," it was not error to allow proof that this was the name of a corporation. **George**, 123/504, 51 S. E. 504.

Usually one may be indicted by any name that will identify him; indictment with alias. **Stinchcomb**, 119/442, 46 S. E. 639.

Variance between name alleged in indictment (**M. M. Giddens**) and that shown by proof to be name of owner of stolen property (**Mose Giddens**) not prevent conviction; jury authorized to infer that "M. M." was **Mose**. **Hall**, 22 A. 114, 95 S. E. 936.

Variance fatal where indictment named injured person as **Ed. Hightower**, and the proof showed he was named **Edmund Green Hightower** and called **Green Hightower** and no other name. **Irwin**, 117/722, 45 S. E. 59.

Variance in evidence and indictment. **Jackson**, 134/474, 68 S. E. 71.

Written in indictment uncertain, jury allowed to determine what it was, on trial of plea of misnomer. **Washington**, 113/698, 39 S. E. 294.

Negligence criminal, charge as to, not authorized by evidence here. **Wolfe**, 121/587, 49 S. E. 688.

When error to give jury code definition of crime, including criminal negligence. **Rucker**, 12 A. 632, 77 S. E. 1129.

Nolle prosequi could be entered after bill of exceptions complaining of overruling of demurrer to indictment was sued out. Dismissal of writ of error should result. **Jones**, 115/817, 42 S. E. 271.

Nuisance; indictment against power company creating pond which caused malaria, etc., sufficient. **Central Georgia Power Co.**, 10 A. 448, 73 S. E. 448, 688.

Obscene, vulgar or profane language in presence of female, indictment good; charge of court error. **Roberts**, 120/177, 47 S. E. 511. No provocation, conviction authorized. **Powell**, 120/

181, 47 S. E. 563. Indictment need not allege that the words were used of or to another. **Kelly**, 126/547, 55 S. E. 482.

Obstructing legal process; accusation should show official character of officer, and nature of process. **Hunter**, 4 A. 579, 61 S. E. 1130.

Indictment for, sufficient. **Gibson**, 118/30, 44 S. E. 811.

Allegation that process was "lawful," a mere conclusion; indictment defective in not naming court from which process issued, or the county in which issued. **Pashal**, 16 A. 155, 84 S. E. 725.

Officer's authority not shown by allegation that he was "deputized as a deputy sheriff to execute the process," etc. **Paschal**, 16 A. 155, 84 S. E. 725.

Essential allegations of indictment. **Paschal**, 16 A. 155, 84 S. E. 725. Specific acts by which execution of process was obstructed need not be set out in indictment. **Ib.** 155, 157.

Obstructing railroad-track alleged; but one offense charged. Fact of incorporation need not be alleged. **Alsobrook**, 126/100, 54 S. E. 805.

Indictment must allege that road was that of a chartered company. **Sanders**, 118/788, 45 S. E. 602.

Obtaining money on false writing; indictment sufficient, and conviction warranted. **Gray**, 6 A. 428, 65 S. E. 191. Offenses, merger of. **Martin**, 123/479, 51 S. E. 334.

Dependent and independent. **Stone**, 118/707, 45 S. E. 630, 98 Am. St. R. 145. Of same nature, in two counts; election not required. **Walker**, 118/772, 45 S. E. 62; **Cody**, 118/784, 45 S. E. 622.

Of same nature, joinder of, in same indictment in different counts. **Jones**, 2 A. 433, 58 S. E. 559.

Of same nature, though differing and varying in punishment, in a single indictment and trial. **Sims**, 110/290, 34 S. E. 1020.

Proof of various transactions under indictment charging offense generally. **White**, 9 A. 558, 71 S. E. 879.

Indictment must cover offense of which defendant convicted. **Goldin**, 104/549, 30 S. E. 749; **Hudson**, 104/723, 30 S. E. 947.

Offer to return stolen money, no defense. **Hamilton**, 18 A. 295, 89 S. E. 449; **McCoy**, 19 A. 32, 35, 90 S. E. 737.

To return money, what sufficient under "labor contract act." **Paschal**, 16 A. 370, 85 S. E. 358.

Officer not justified by abusive language, in beating prisoner. **Moody**, 120/868, 48 S. E. 340.

Omission of the word "representing," in allegation that the accused defrauded a certain person "by falsely and fraudulently to" a certain other person, etc.; whether fatal defect. **Foss**, 15 A. 478, 83 S. E. 880.

Omission of "wilfully," as ground for arrest of judgment. **Herndon**, 23 A. 538, 99 S. E. 11.

Omitting word "unlawfully," as characterization of act charged, but concluding, "contrary to the laws," etc., good as against motion to arrest judgment. **Badger**, 5 A. 477, 63 S. E. 532. Effect of those concluding words, where statutory exception was not expressly negated. **Lanier**, 5 A. 472, 63 S. E. 536.

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Of judge, indicated by question to witness, whether witness had known accused "to do any honest work," and by other questions. **Jaques**, 111/832, 36 S. E. 104.

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ness. **Hubbard**, 108/786, 33 S. E. 814. Compare **Varner**, 108/813, 34 S. E. 166.

Opprobrious words and abusive language, as justification for assault and battery, are spoken at the time, not those previously written and published. **Haygood**, 137/168, 73 S. E. 81.

Aggressor in use of, can not defend battery by proof of similar words he so provoked. **Sutton**, 2 A. 659, 58 S. E. 1108.

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Oral motion, indictment may be quashed on, at any stage of trial, for any defect that would arrest judgment. *Gilmore*, 118/299, 45 S. E. 226.

Owner's acquiescence after theft, not destroy criminal element. *Waters*, 15 A. 342, 83 S. E. 200.

Non-consent, not shown by non-consent of agent in charge, when. *Harris*, 14 A. 574, 81 S. E. 815.

Ownership, allegation as to, in indictment for arson, supported by proof of occupancy under claim of right. *Harrell*, 121/607, 49 S. E. 703.

Allegation of, when essential. When not sufficiently alleged, as to partnership. *Buffington*, 124/24, 52 S. E. 19. Proof of, when immaterial, relatively to trespasser. *Houston*, 124/417, 418, 52 S. E. 757.

Allegations as to, not necessarily imply absolute ownership. *Livingston*, 17 A. 139, 142, 86 S. E. 449.

Different as to several articles stolen at one time, not prevent inclusion of all in indictment for one larceny. *Dean*, 9 A. 571, 71 S. E. 932.

Of house in which crime committed; house occupied by husband and wife could be described as his, though she paid rent and supported him. *Patterson*, 8 A. 454, 69 S. E. 591.

In burglary and larceny from house, is in possessor and occupant. *Trice*, 116/603, 42 S. E. 1008. Of car broken and entered, "in custody and control" of company other than that marked thereon, sufficient. *Gilbert*, 116/819, 43 S. E. 47.

Indictment insufficient, because of failure to name owner or proprietor of shores of waters from which fish were taken in violation of Penal Code, § 601. *Burbank*, 22 A. 646, 96 S. E. 1043.

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562, 77 S. E. 830; *Norfleet*, 9 A. 853, 854, 72 S. E. 447. When not necessary to allege ownership, in indictment for larceny after trust. *Grier*, 18 A. 738, 90 S. E. 490.

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Of stolen goods may be laid in one lawfully in possession; properly laid in one of joint owners. *Waters*, 15 A. 342, 83 S. E. 200.

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Indictment for setting fire to the mill etc. of the "Tifton Knitting Mills", it was not error to allow proof that this

was the name of a corporation. **George**, 123/504, 51 S. E. 504.

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Unnecessary allegation as to, must be proved. **Lawrence**, 10 A. 789, 74 S. E. 300. Whether necessary to allege, in indictment for marking animal. *Ib.*

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Pistol carrying without license, allegation as to, insufficient in not adding: "from the ordinary of the county in which the defendant resides." *Hansford*, 14 A. 810, 82 S. E. 375.

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Of guilty may be made in behalf of defendant by his counsel; defendant bound by act of counsel. *Bearden*, 13 A. 264, 79 S. E. 79.

Of guilty may be withdrawn before sentence. *Polston*, 15 A. 632, 83 S. E. 1101. This right is unqualified, and it makes no difference that a previous plea of not guilty was withdrawn and the State's witnesses discharged. *Woodward*, 13 A. 130, 78 S. E. 1009.

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Of guilty, withdrawal of, after sentence. *Foster*, 22 A. 109, 95 S. E. 529; *Griffin*, 12 A. 615, 77 S. E. 1080.

Of guilty, withdrawal of, not allowed, as a matter of right, after sentence orally pronounced. *Sanders*, 18 A. 786, 90 S. E. 728. Abuse of discretion in not allowing withdrawal on evidence of misapprehension as to offense to

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Of not guilty, made by standing mute; omission to enter on minutes, not vitiate trial. *Johnson*, 7 A. 48, 66 S. E. 148.

Of guilty may be withdrawn, and plea of not guilty substituted, at any time before judgment is pronounced, though the witnesses have been dismissed and jurors discharged for the term. *Nobles*, 17 A. 382, 86 S. E. 1073.

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By another, treated as possession by defendant. *Duren*, 21 A. 524, 94 S. E. 902.

Constructively was in one who voluntarily delivered property to another for inspection, until the latter deprived him of it unlawfully. *Grant*, 125/261, 54 S. E. 191.

Of articles connected with crime; allowing jury to take article to their room for inspection not error here. *Union*, 7 A. 27, 31, 66 S. E. 24.

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Of stolen article; identity of razor in defendant's possession, with one stolen, not shown, conviction set aside. *Rayfield*, 5 A. 816, 63 S. E. 920.

Of stolen goods by wife was constructively that of husband. *Jenkins*, 2 A. 684, 58 S. E. 1115.

Of stolen goods, error to charge jury as to, where the evidence did not identify the goods. *Brantley*, 115/230, 41 S. E. 695.

Of stolen goods, honest account of, required. *Davidson* 104/761, 30 S. E. 946.

Of stolen goods, presumption from; error in omitting element of recency in charging jury as to. *Mance*, 5 A. 229, 62 S. E. 1053.

Of stolen goods, presumption from; error in omitting element of recency, in charging jury as to, harmless, in view of undisputed facts. *Rayfield*, 10 A. 48, 72 S. E. 515.

Of stolen goods. Proper charge to jury on effect of evidence as to. *Gibson*, 20 A. 74, 93 S. E. 48. Charge as to, not subject to exceptions taken. *Gates*, 20 A. 171, 92 S. E. 974.

Of stolen goods, recently after crime, effect of. *Andrews*, 116/85, 42 S. E. 476.

Of stolen goods, sufficiency of explanation as to. *Mosley*, 11 A. 303, 75 S. E. 144. Error in charge to jury as to effect of recent possession unexplained. *Wilkes*, 11 A. 384, 75 S. E. 443. Proper charge. *Strickland*, 11 A. 417, 75 S. E. 446.

Of stolen goods; when error not to charge jury as to explanation of possession. *Morris*, 5 A. 300, 63 S. E. 26. Sufficient charge as to explanation. *Mangum*, 5 A. 445, 63 S. E. 543.

Of stolen property as a circumstance to show guilt. Failure to charge as to recency. *Sharpe*, 105/588, 31 S. E. 541. Or as to possession. *Jones*, 105/649, 31 S. E. 574.

Error in charge that the burden was on defendant to show that he came by

the goods "honestly." *Johnson*, 22 A. 639, 96 S. E. 1045.

When sufficient to sustain allegation of ownership. *Lunsford*, 21 A. 78, 94 S. E. 80; *Hall*, 7 A. 115, 66 S. E. 390.

Postponement because defendant not prepared to meet charge as of date proved, not granted. *Fraser*, 112/13, 37 S. E. 114.

For one day, discretion abused in refusing. *Brown*, 120/145, 47 S. E. 543.

No abuse of discretion as to. *Simmons*, 116/583, 42 S. E. 779.

To enable accused to procure additional counsel. *Howard*, 115/244, 41 S. E. 654.

To give counsel time to study case, discretion in refusing, not abused. *Baker*, 111/141, 36 S. E. 607.

To give time to prepare, discretion as to. *Harris*, 119/114, 116, 45 S. E. 973.

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Preparation for trial, time for. *Moore*, 7 A. 77, 66 S. E. 377.

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Time not sufficient. *Battles*, 9 A. 192, 70 S. E. 973. See *Holland*, 9 A. 833, 72 S. E. 290.

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Of accused at all stages of trial is his right. *Hill*, 118/24, 44 S. E. 820; *Frank*, 142/741, 83 S. E. 645, L. R. A. 1915D, 817.

At reception of verdict, essential, unless waived. Counsel can not waive, without express authority. *Lyons*, 7 A. 50, 66 S. E. 149.

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Reference to accused as "prisoner," in putting juror upon him, not ground for mistrial, though he was under bond. **Hall**, 22 A. 112, 95 S. E. 936.

Reference to the accused as "prisoner," by judge charging jury, not error, though he was under bond and not actually imprisoned. **Allen**, 18 A. 1, 88 S. E. 109.

Procedure, substantial and not technical compliance with, to question legality of proceedings. **Williams**, 3 A. 446, 60 S. E. 113.

Profane language in presence of female, provocation by third person, as defense. **Ray**, 113/1065, 39 S. E. 408; **Cleveland**, 22 A. 124, 95 S. E. 540.

Indictment for using profane, obscene, and vulgar language, good as to obscene and vulgar language; the word "profane" treated as surplusage. **Holcombe**, 5 A. 47, 62 S. E. 647.

Profanity and threats of accused, improper reference to, in argument of prosecuting counsel. **Cofield**, 14 A. 813, 82 S. E. 355.

Proviso in criminal statute, when necessary to negative, in indictment. **Rumph**, 118/122, 45 S. E. 1002. See **Tigner**, 119/114, 45 S. E. 1001.

When need not be negated in indictment. **Blocker**, 12 A. 81, 76 S. E. 784.

Provocation, as defense to charge of having used profane language in presence

of female. **Ray**, 113/1065, 39 S. E. 408.

By opprobrious words. **Warnack**, 3 A. 590, 60 S. E. 288. By slapping face. **Reese**, 3 A. 610, 610, 60 S. E. 284.

By words, as justification for assault; words must have been in presence of accused at time of assault. **Berry**, 105/683, 31 S. E. 592.

By words, threats, etc., effect of. **Kimbrell**, 138/414, 75 S. E. 252.

Conviction of shooting at another upheld regardless of, where shooting was at one running away. **Studstill**, 105/832, 31 S. E. 542.

For breach of peace, what sufficient. **Rumsey**, 5 A. 802, 63 S. E. 921.

For homicide. **Berry**, 105/689, 31 S. E. 592. Acts not sufficient as, may arouse reasonable fears. **Johnson**, 105/665, 31 S. E. 399.

For homicide, circumstances equivalent to assault, etc. **Rumsey**, 126/420, 55 S. E. 167.

For homicide, proper charge as to. **Fargerson**, 128/27, 57 S. E. 101; **Pryer**, 128/29, 57 S. E. 93; **Rogers**, 127/67, 57 S. E. 667, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364; **Bird**, 128/253, 57 S. E. 320.

For opprobrious words, sufficiency of, question for jury. **Williams**, 105/608, 31 S. E. 738.

For shooting, sufficiency of. **Mathews**, 125/50, 54 S. E. 196.

For stabbing, sufficiency of. **Morgan**, 119/566, 567, 46 S. E. 836.

For use of profane language in presence of female; and for assault and battery on wife. **Blackwell**, 110/294, 295, 34 S. E. 1016, 1019.

May exclude idea of malice, not of unlawfulness. **Cole**, 2 A. 737, 59 S. E. 24.

Meaning of "provocation." **Manson**, 14 A. 838, 82 S. E. 763. Charge of court as to, susceptible of misconstruction. *Ib.*

Means sufficient provocation, in code section as to abusive or obscene language. **Holcombe**, 5 A. 53, 62 S. E. 647. Burden of proof as to. *Ib.*

By himself, as affecting defendant's right of self-defense; charge to jury as to, considered. *Swain*, 15 A. 449, 83 S. E. 642.

To slayer, justifiable conduct is not. *Rhodes*, 133/723, 66 S. E. 887.

Public trial, constitutional right to, when violated by excluding spectators; cases cited. *Tilton*, 5 A. 59, 82 S. E. 651.

Punctuation, indictment not defective on account of. *Christopher*, 16 A. 194, 84 S. E. 833.

Quarantine rules as to cattle, violation of; indictment insufficient, in not setting forth rule violated. *Mathews*, 16 A. 312, 85 S. E. 284. Movement of live stock within a quarantined area on defendant's premises, not prohibited by rule here. *Ib.*

Quashed, indictment not, because unsupported by evidence. *Scott*, 6 A. 567, 65 S. E. 359.

Not on plea in abatement, objection coming too late. *Tucker*, 135/79, 68 S. E. 786.

Not because judge administering oath to grand jury was disqualified in the case. *Cabariss*, 8 A. 129, 68 S. E. 849.

Refusal to quash, not proper ground of motion for new trial. *Loeb*, 115/241, 41 S. E. 575.

Question as to sufficiency of indictment was not presented by exception "to the overruling of said indictment." *Thomas*, 22 A. 188, 95 S. E. 758.

Railroad car, throwing rock or shooting at; indictment need not allege that the car belonged to a chartered railroad company. *Allen*, 123/499, 51 S. E. 506.

Track, attempt to obstruct; and wrecking or attempting to wreck train; indictment and punishment. *Alsbrook*, 128/100, 54 S. E. 805.

Train, stealing or attempting to steal ride on; accusation sufficient, under act of 1897. *Mack*, 119/352, 46 S. E. 437.

Train, indictment for wrecking, need not allege ownership. *Wilson*, 10 A. 67, 72 S. E. 605.

Attempt to wreck train. Indictment sufficient; description of train not required. *Turner*, 10 A. 18, 72 S. E. 604. Indictment not duplicitous. *Wilson*, 10 A. 67, 72 S. E. 605.

Rape, assault with intent to; indictment sufficient. *Robinson*, 118/32, 44 S. E. 814; *Jackson*, 114/861, 40 S. E. 989.

Reading law to jury, in argument; discretion of judge in refusing to allow counsel to read code section to jury without first reading it to him, in their presence, not abused. *Clark*, 8 A. 757, 70 S. E. 90. Reading report of other case to jury, in argument; discretion as to allowing. *Hanley*, 128/24, 57 S. E. 236; *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364.

Recalling and recharging jury in absence of accused, and his counsel, when error. *Hopson*, 116/90, 42 S. E. 412.

Receiving stolen goods, essential allegation of indictment for. *Rogers*, 138/750, 75 S. E. 1131.

Indictment bad for want of sufficiently specific description of articles. *Brown*, 116/559, 42 S. E. 795.

Descriptive averments of accusation must be particular and full; and material, and even immaterial, allegations must be proved. *Wright*, 1 A. 158, 57 S. E. 1050.

Indictment sufficient. *McKissick*, 11 A. 721, 76 S. E. 71. Not necessary to allege that the thief had been convicted, or to state why he had not been. *Tinch*, 11 A. 158, 74 S. E. 1003.

Receiver can not be joined with principal offender. Necessary allegations of indictment. Conviction of principal, or inability to take him, must appear before indictment of accessory. *Smiley*, 23 A. 317, 98 S. E. 125.

Record, entry on, of presence of prisoner and his counsel when verdict rendered and sentence pronounced, and from arraignment to sentence, or that prisoner was asked why sentence should not be given, has never been the practice in this State. *Rawlins*, 127/24, 55 S. E. 958.

Amendable to conform to truth, where judgment of guilty pronounced but not entered. *Merritt*, 122/752, 50 S. E. 926.

Judgment not arrested or set aside for silence of, as to matters which it has never been the practice in this State to enter thereon. *Franks*, 120/495, 48 S. E. 148.

Meaning of "defect on the face of the record," for which judgment will be arrested. "Record" does not include charge of court or brief of evidence filed with motion for new trial. *Spence*, 7 A. 825, 68 S. E. 443.

Of arraignment, and plea, failure to make, not vitiate trial; omission curable by order nunc pro tunc. *Johnson*, 7 A. 48, 66 S. E. 148.

Indictment not sent up in, to appellate court, no ground for dismissal of writ of error, when. *McLendon*, 14 A. 737, 82 S. E. 317.

Registration of business and payment of tax; indictment for violation of statute as to, sufficient, and conviction warranted. *Dobbs*, 8 A. 734, 70 S. E. 101.

Relationship of slayer to person attacked, when justification for homicide. *Gillis*, 8 A. 696, 70 S. E. 53.

Between accused and solicitor-general signing indictment, not invalidate it. *Salter*, 125/761, 54 S. E. 685.

Remarks by judge in hearing of jurors, proper motion as to. *Perdue*, 135/277, 69 S. E. 184.

Of judge, when no reversal for. *Perry*, 116/850, 43 S. E. 253; *Hodge*, 116/852, 43 S. E. 255.

Of counsel, when no cause for new trial. *White*, 127/273, 56 S. E. 425. Remark of State's counsel to witness, "I agree with you," not so prejudicial as to require new trial. *Futch*, 137/75, 72 S. E. 911.

Remedy, where indictment bad, is demurrer, or motion in arrest of judgment, not motion for direction of verdict, nor for new trial on ground that verdict is contrary to law. *Eaves*, 113/750, 758, 39 S. E. 318.

Removing property from State; or concealing it, where held under conditional

sale; indictment sufficient; circumstances warranting conviction. *Strickland*, 14 A. 591, 81 S. E. 819.

Renting house for illegal purpose; charge to jury as to circumstances sufficient to put one on notice of the use made of the premises. *Bashinski*, 123/512, 51 S. E. 499.

Reopening case, discretion of court as to. *Sharp*, 111/177, 36 S. E. 633; *Duggan*, 116/846, 43 S. E. 253; *Huff*, 104/521, 30 S. E. 808; *Hunley*, 104/755, 30 S. E. 958.

For evidence, discretionary. *Jackson*, 118/782, 45 S. E. 604; *Powell*, 101/10, 29 S. E. 309, 65 Am. St. R. 277; *McClain*, 17 A. 751, 88 S. E. 409; *Strickland*, 115/222, 225, 41 S. E. 713; *Bundrick*, 125/753, 54 S. E. 683.

For additional testimony, no abuse of discretion as to. *Ward*, 112/75, 37 S. E. 111; *Frazier*, 112/869, 38 S. E. 349.

To allow proof of allegation of indictment, no abuse of discretion; case should be reopened whenever necessary in order to obtain the truth. *Odum*, 21 A. 312, 94 S. E. 257; *Chatman*, 8 A. 842, 70 S. E. 188.

To prove incriminating statements of accused by witness already examined in chief. *Milam*, 108/30, 33 S. E. 818. **Reputation of sister, assault on one making charges against.** *Renfree*, 8 A. 668, 70 S. E. 70.

Of sister, battery on one villifying; sufficiency of provocation, a jury question. *Farmer*, 7 A. 688, 67 S. E. 884. **Restitution after unlawful taking or conversion, effect of.** *Hagood*, 5 A. 86-7, 62 S. E. 641.

Offer of, no defense on trial for embezzlement. *Hamilton*, 18 A. 295, 89 S. E. 449.

Of stolen money. *Hamilton*, 18 A. 295, 89 S. E. 449.

Of property fraudulently obtained, no bar to conviction. *Lewe*, 111/650, 36 S. E. 856; *Williams*, 105/606, 31 S. E. 546.

Return of indictment must be in open court. Handed by bailiff to clerk during recess, subject to abatement.

Sampson, 124/776, 53 S. E. 332, 4 Ann. Cas. 525.

In open court, not shown by minutes, irregularity cured by oral testimony. **Chelsey**, 121/340, 49 S. E. 258.

Into court and delivery to clerk or deputy; evidence sufficient for finding. **Ledbetter**, 2 A. 631, 58 S. E. 1106.

Riot by two named persons "and others," not named and not alleged to be unknown; indictment demurrable; conviction of one upheld, when. **Martin**, 115/255, 41 S. E. 576; **Moore**, 115/259, 41 S. E. 578.

Accusation sufficient; no error in charge to jury. **Howell**, 17 A. 802, 88 S. E. 592.

Indictment for, sufficient. Plea of autrefois acquit good. **Lock**, 122/730, 50 S. E. 932.

Indictment sufficient. No variance by proof of battery, where indictment charged assault in commission of riot. **Carter**, 7 A. 44, 65 S. E. 1072. Inadmissible sayings of persons present. **Harnage**, 7 A. 573, 67 S. E. 694.

Robbery, act of 1903 added a distinct grade of (suddenly snatching, etc.), which must be charged in the indictment, in order to be submitted to jury. **Pride**, 124/791, 53 S. E. 192.

By force and intimidation charged in same count. **Story**, 12 A. 645, 77 S. E. 914.

Both grades of, may be charged in one or two counts of the same indictment. **Harris**, 1 A. 136, 57 S. E. 937.

By taking money from one not owner; indictment sufficient though omitting allegation that the taking was without owner's consent, and not showing lawfulness of possession of person from whom taken. **Carson**, 22 A. 743, 97 S. E. 202.

Description of money taken, and allegation of value, sufficient: "fifty dollars in money, of the value of fifty dollars, the personal property of" person named, from whom taken. **Maxwell**, 9 A. 875, 72 S. E. 445.

Indictment sufficient; allegation as to taking "fraudulently" implied intent

to steal; evidence warranting conviction. **Holland**, 8 A. 202, 68 S. E. 861.

Ownership need not be alleged. **Staples**, 114/256, 40 S. E. 264.

Verdict "guilty of robbery by force" (as charged in one count of indictment), sustainable, though another count charged robbery by snatching. **Gailliard**, 16 A. 195, 84 S. E. 837.

Rule as to when indictment sufficient. **Cook**, 22 A. 770, 773, 97 S. E. 264; **Glover**, 126/594, 55 S. E. 592; **Central Georgia Power Co.**, 10 A. 449, 73 S. E. 688; **Roughlin**, 17 A. 207, 86 S. E. 452; **Ruff**, 17 A. 338, 86 S. E. 784; **Rimes**, 7 A. 556, 67 S. E. 223; **Chelsey**, 121/342, 49 S. E. 258.

For determining validity of indictment. **Pruitt**, 102/690, 29 S. E. 437.

That all acts specified in the statute as constituting the crime must be alleged. **Mathews**, 16 A. 312, 85 S. E. 284.

Sale, allegation as to consideration of, that it was "valuable," when sufficient. **Taylor**, 126/557, 55 S. E. 474.

Accusation not defective in not alleging to whom made, or at what place in the county. **Harker**, 8 A. 94, 68 S. E. 650.

By agent alleged; when not necessary to give his name in accusation. **Harker**, 8 A. 93, 68 S. E. 650. Omission to charge jury as to principal's knowledge of, not cause for reversal here. *Id.* 94.

Of cocaine; accusation sufficient. **Harker**, 8 A. 93, 68 S. E. 650.

If name of purchaser of liquor is stated, proof of sale to another is irrelevant unless he was agent for the person named and the defendant knew it. **Pines**, 15 A. 348, 83 S. E. 198.

Of mortgaged property, indictment for, good, as against special demurrer. **Richter**, 4 A. 274, 61 S. E. 147.

Unlawful. Indictment sufficient, as against objection that it failed to specify the particular property, to whom sold, price received, etc. **Bell**, 14 A. 425, 81 S. E. 253.

Without having registered business; sufficiency of indictment and proof. **Dobbs**, 8 A. 734, 70 S. E. 101.

Second conviction. When fact of former sentence must be charged in indictment. That maximum penalty must be imposed does not alter character of original offense or provide for different punishment. Allegation and proof of previous sentence need not be made as basis of imposing maximum penalty. Identity of accused, how shown to judge. *McWhorter*, 118/55, 44 S. E. 873.

Second indictment, trial under, while first indictment pending. *Appleby*, 9 A. 570, 71 S. E. 876.

Seducer, killing of, by parent of girl. *Miller*, 9 A. 599, 71 S. E. 1021.

Parent's right to attack. *Brown*, 10 A. 50, 72 S. E. 537.

Seduction by persuasion and promises of marriage, "and by other false and fraudulent means," alleged without specifying what the latter means were, demurrer good. *Langston*, 109/153, 35 S. E. 166, 779.

Indictment charging, "by other false and fraudulent means than by persuasion and promise of marriage" is demurrable when it fails to set forth the means. Married man's representations to 14-year-old girl visiting in his home and intimate with his family, not sufficient here. *McGouldrick*, 20 A. 185, 92 S. E. 953.

Indictment demurrable as indictment for, but sufficiently charging adultery and fornication, was sufficient as against general demurrer. *McGouldrick*, 20 A. 185, 92 S. E. 953.

Indictment for, need not allege accused was unmarried. *Jordan*, 120/865, 48 S. E. 352.

Self-defense being main theory of defense, failure to charge on theory of accident, set up in prisoner's statement, not error. *Dunn*, 116/515, 42 S. E. 772.

Homicide in. *Teasley*, 105/738, 30 S. E. 938; *Mills*, 133/155, 65 S. E. 368; *Hall*, 133/177, 65 S. E. 400.

Homicide in, distinct from defense of habitation or property. *Nix*, 120/162, 47 S. E. 516. Benefit of plea of, not impaired by charge to jury. *Moody*,

120/868, 48 S. E. 340; *Williams*, 120/870, 48 S. E. 368.

Right of, in one who provokes difficulty, where the violence offered is disproportionate to the provocation. *Sams*, 124/25, 52 S. E. 18.

Two theories of: (1) applicable to mutual combat; (2) reasonable fears. *Stephens*, 118/762, 45 S. E. 619.

Separate findings as to defendants jointly charged, who do not sever, when not made. *Welborn*, 116/524, 42 S. E. 773. **Sequestration of witnesses, discretion of court as to.** *Stapleton*, 19 A. 38, 90 S. E. 1029.

Judge may permit prosecutor to be first sworn, and to remain in court to assist prosecuting attorney. *Butler*, 12 A. 643, 77 S. E. 1130.

Objection to violation of rule as to, waived by not making it in due time. *Collins*, 10 A. 34, 72 S. E. 526.

Setting forth essential ingredients so as to enable accused to prepare for his defense, indictment sufficient. *Williams*, 2 A. 629, 1071.

Settlement by repayment of money fraudulently obtained, no bar to conviction. *Williams*, 105/606, 31 S. E. 546.

For goods fraudulently obtained, not bar conviction. *Lowe*, 111/650, 36 S. E. 856.

Several indictments can not be adopted on motion at one time, when against different persons and for different offenses, and when no separate hearing of testimony is had in each case. *Evans*, 17 A. 120, 86 S. E. 286.

Several transactions, indictment for, conviction on proof of one. *Hagood*, 5 A. 80, 62 S. E. 641.

Severance refused, no ground for reversal, where court afterward offered to allow it. *Langley*, 126/100, 54 S. E. 821.

Sex not necessary allegation in indictment for cattle-stealing. *Burch*, 4 A. 384, 61 S. E. 503.

Sexual intercourse with slayer's daughter, as cause of homicide. *Miller*, 9 A. 599, 71 S. E. 1071.

Signed by one other than solicitor-general, by his authority, indictment or special

presentment good. *Newman*, 101/534, 28 S. E. 1005.

Singular treated as including plural. *Wilburn*, 8 A. 28, 68 S. E. 460.

Slander, battery on account of. *Farmer*, 7 A. 688, 67 S. E. 834.

Solicitor-general not excused from testifying as to oath he administered. *Switzer*, 7 A. 7, 65 S. E. 1079.

Sound mind and discretion of the accused need not be alleged in indictment for homicide. *Brown*, 13 A. 437, 79 S. E. 231.

Special issue, error on trial of, when not proper ground of motion for new trial in main case. *McDow*, 113/699, 39 S. E. 295.

Specific instructions applying the law to the facts, commended. *Bradley*, 121/206, 48 S. E. 981.

Stabbing; accusation charging that the stabbing was with a knife, "or some other like instrument," bad on special demurrer. *Henderson*, 113/1148, 39 S. E. 446.

Accusation not negating statutory exceptions, as to self-defense or other circumstances of justification, demurrable; but good as against motion to arrest judgment, where indictment concluded "contrary to the laws," etc. *Lanier*, 5 A. 472, 63 S. E. 536.

Statute, when material parts of, to be read into indictment or accusation. *Daniel*, 114/533, 40 S. E. 805.

Sufficiency in terms of statute. *Skipper*, 23 A. 155, 97 S. E. 866; *Evitt*, 23 A. 534, 98 S. E. 737.

"Steal" defined; effect of this word in indictment; implies taking and carrying away and a criminal conversion. *Cason*, 16 A. 820, 86 S. E. 644.

Stealing ride on train, or attempting to do so; accusation sufficient, under act of 1897. *Mack*, 119/352, 46 S. E. 437.

Stenographer's notes of evidence, allowing solicitor-general to read from transcript of, in argument, not cause new trial, when. *Thornton*, 107/683, 33 S. E. 673.

Of testimony, reading to jury to refresh recollection, discretion as to. *Strickland*, 115/227, 41 S. E. 713.

Substance rather than form, considered in determining as to sufficiency of indictment. *Tooke*, 4 A. 496, 61 S. E. 917.

Support of indictment by proof of offenses at other times than date charged. *Autrey*, 23 A. 764, 99 S. E. 389.

Surplusage, effect of. *Harker*, 8 A. 93, 68 S. E. 650. Indictment not vitiated by. *Dobbs*, 8 A. 734, 70 S. E. 101. Error in basing instruction to jury on, harmless. *Ib.*

No ground of special demurrer. *Jones*, 2 A. 434, 58 S. E. 559.

Suspension of trial, to allow expert witness to examine wound, discretion as to. *Herndon*, 111/178, 36 S. E. 634.

Taking property from one not owner, sufficiency of indictment as to. *Carson*, 22 A. 743, 97 S. E. 202.

Teacher's license, sufficiency of indictment for forging or altering. *Taylor*, 123/133, 51 S. E. 326.

Term at which found, indictment need not show on its face; entry on back sufficient. *Nixon*, 121/144, 48 S. E. 966.

Testifying in absence of accused, when not require new trial. *Vanderford*, 126/753, 55 S. E. 1025.

Testimony as taken down may be read to jury, to settle difference among them as to, what it was. *Morman*, 110/311, 35 S. E. 152.

Disagreement as to, pending argument of counsel, proper practice on. *Palmer*, 114/517, 40 S. E. 717.

Theories of defendant's evidence and statement, differing, how charge to jury adjusted. *Richards*, 114/834, 40 S. E. 1001.

Of defense, surprise at, indicated by question of judge to counsel, when no error for reversal. *Herrington*, 130/307, 60 S. E. 572.

Raised by evidence must be considered. *Horton*, 120/307, 47 S. E. 969.

Threats not accompanied by effort or apparent intent to execute them do not show offense of obstructing legal process. *Allen*, 5 A. 237, 62 S. E. 1003.

Omission to charge jury as to, when not error. *Mixon*, 15 A. 253, 82 S. E. 935.

Proper charge to jury as to, in homicide case. *Taylor*, 121/355, 49 S. E. 303. Evidence warranted charge as to. *McDuffie*, 121/580, 49 S. E. 708.

Timber, cutting or removing; indictment should name owner. *Brown*, 16 A. 268. 85 S. E. 262.

Time of offense alleged as subsequent to finding of indictment, demurrable; but judgment not arrested for. *Adkins*, 103/5, 29 S. E. 432.

Alleged in indictment, impossible or after repeal of law alleged to have been violated, ground for demurrer, not for new trial. *Draper*, 6 A. 12, 64 S. E. 117.

Allegation of date of misdemeanor, not prevent proof of its commission at any time not more than two years before affidavit on which the accusation is based. *Shealey*, 16 A. 192, 84 S. E. 839.

Allegation of time of murder, not necessary. *Black*, 14 A. 534, 81 S. E. 588.

Alleged as on future date, no ground for motion to arrest judgment. *Newsome*, 2 A. 392, 58 S. E. 672.

Alleged as subsequent to finding of indictment, ground for demurrer; too late to raise question after verdict. *Spencer*, 123/133, 51 S. E. 294.

Charge of court as to, under prohibition law of 1917. *Tatum*, 22 A. 638, 96 S. E. 1046.

Charge of court that offense could be proved at any time in two years, prior to filing accusation based on law adopted less than two years before, was not harmful. *Adams*, 22 A. 252, 95 S. E. 877.

Charge to jury sufficient as to what must appear. *Sutton*, 18 A. 107, 88 S. E. 920.

Inaccuracy as to limit of time for prosecution, harmless, where time was within the statutory period before indictment. *Langston*, 23 A. 82, 97 S. E. 444.

Necessary allegations as to. *Norris*, 15 A. 511, 512, 83 S. E. 866.

Sufficient allegation of, in indictment. *Bridges*, 103/30, 29 S. E. 859.

"Speaking" demurrer as to, not sustained. *Woodard*, 18 A. 59, 88 S. E. 825.

Indictment omitting year of the crime, (the time being given as "the year nineteen hundred and —") was subject to special demurrer, but not void. *Walker*, 12 A. 91, 76 S. E. 762; *Colwell*, 17 A. 750, 88 S. E. 410.

Indictment omitting day or month of year stated, bad on special demurrer. *Braddy*, 102/568, 27 S. E. 670.

Indictment must allege a certain time, within the statute of limitations, when the offense committed. *Tipton*, 119/304, 46 S. E. 436.

Commission of the offense prior to indictment sufficiently appeared from allegations here. *Sutherland*, 121/591, 49 S. E. 781.

See *Criminal Law*, 1, catchwords, "Limitation," "Time of Offense."

Title, proper instruction to jury as to, on trial of one charged with maliciously destroying fence. *Woods*, 10 A. 476, 73 S. E. 608.

Tongue, not a deadly weapon, nor legal equivalent of a blow. *Robinson*, 118/198, 44 S. E. 985.

Transaction on which indictment founded, testimony as to investigation of grand jury not admitted to show. *Davis*, 105/783, 32 S. E. 130.

Transfer of indictment from superior court to city court, how shown. *Coleman*, 4 A. 786, 62 S. E. 487. Effect. *Gordon*, 106/121, 32 S. E. 32.

To county court, indictment becomes office paper thereof. *Ga. So. R. Co.*, 116/846, 43 S. E. 254.

Treatment of wounds, lack of skill and care in, does not affect guilt. *Perdue*, 135/278, 69 S. E. 184.

Trespass amounting to felony (not misdemeanor) may justify homicide. *Drew*, 136/658, 71 S. E. 1108.

Killing of trespasser, when not justifiable, nor voluntary manslaughter. *Parks*, 105/248, 31 S. E. 580.

Description of land, what required in indictment. *Baker*, 19 A. 85, 90 S. E. 983.

Assault to prevent trespass. *Zoucks*, 19 A. 744, 746, 92 S. E. 228.

Homicide to prevent trespass on property. *Bennett*, 19 A. 445, 446, 91 S. E. 889.

Indictment for, too indefinite in description of land. *Morrow*, 17 A. 116, 86 S. E. 280; *Heard*, 4 A. 572, 61 S. E. 1055.

Description of land, in indictment, sufficient. *Mitchell*, 12 A. 557, 77 S. E. 889.

Killing to prevent. *Fant*, 8 A. 440, 69 S. E. 586.

On property, when not justify homicide. *Nix*, 120/163, 47 S. E. 516.

Pulling down enclosure, Allegation that it was wilful, unnecessary. *Wilcher*, 118/196, 44 S. E. 995.

Trial before judge not lawfully authorized to preside, a nullity. *Wells*, 101/141, 28 S. E. 640.

Conduct of, and suspension to procure attendance of a witness, in judge's discretion. *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426.

Disorder in, properly dealt with. *Hall*, 141/7, 80 S. E. 307. Not such as to impugn fairness of trial. *Frank*, 141/246, 80 S. E. 1016.

Effect of court's failure to interpose in case of disorder of spectators at. *Rawlins*, 124/32, 52 S. E. 1.

Fair and impartial, omission of State to offer testimony is no denial of. Juror's prejudice and bias not established. Intimidation of witness not shown. *Harper*, 131/772, 780, 781, 63 S. E. 339.

Fair, no less than speedy, to be secured. *Brooks*, 3 A. 458, 60 S. E. 211.

Fixing day for; time for preparation; discretion not abused. *Charlon*, 106/400, 32 S. E. 347.

Improper or irrelevant statement of counsel or solicitor on, how to be dealt with; and when no cause to reverse judgment. *Morman*, 133/76, 65 S. E. 146; *Hunter*, 133/79, 65 S. E. 154.

Not prevented by imprisonment for a different offense, when. *Coleman*, 4 A. 786, 62 S. E. 487.

Not vitiated by bailiff's delivery to jury (in view of counsel for accused) of weapons and garment shown, but not formally offered as evidence. *Burke*, 148/230, 96 S. E. 326.

Occurrence in defendant's absence was not a proceeding in. *Short*, 140/781, 80 S. E. 8.

Of criminal cases, rules governing, must not be relaxed. *Young*, 122/727, 50 S. E. 996.

Orderly and fair, in public interest. *O'Dell*, 120/152, 47 S. E. 577. See *Oliveros*, 120/238, 47 S. E. 627, 1 Ann. Cas. 114.

Suspended to receive grand jury presentments, not cause new trial. *Clark*, 117/254, 43 S. E. 853.

Without judge authorized to preside, null. *Wells*, 101/142, 28 S. E. 640.

Transfer, to city court; superior court lost jurisdiction. *Cook*, 10 A. 580, 73 S. E. 861.

Unconstitutional legislation as to. *Williams*, 11 A. 240, 75 S. E. 141.

Unknown persons participating with the accused in riot or conspiracy, what the indictment should allege as to. *Martin*, 115/256, 41 S. E. 576.

Unnecessary allegations rendered material by their averment; proof required. *So. Express Co.*, 67, 97 S. E. 550.

Vagrancy, indictment for, under act of 1903, set forth offense. *Morton*, 118/786, 45 S. E. 616. This act not applied to charge dated before its passage. *Baker*, 118/787, 45 S. E. 617.

Indictment for, sufficient. *Cody*, 118/784, 45 S. E. 622.

Value, indictment sufficient as to. *Battle*, 122/575, 50 S. E. 342.

Of money, sufficient allegation as to. *Maxwell*, 9 A. 875, 72 S. E. 445.

Of stolen articles should be separately stated in indictment for larceny; but may be stated in aggregate. *Bone*, 120/867, 48 S. E. 356.

Various transactions provable under indictment containing general as well as specific allegations. *Tolbert*, 16 A. 311, 85 S. E. 267.

Vending drugs and poisons without license, indictment for, when sufficient. **Carter**, 122/175, 50 S. E. 64.

Verdict, affidavits of jurors received to sustain, not to impeach. **Tolbirt**, 124/770, 53 S. E. 327.

Ambiguous as to count on which founded, construed. **Barbour**, 8 A. 27, 68 S. E. 458.

As acquittal of higher grade, where not received by judge. **Register**, 10 A. 623, 74 S. E. 429.

Construed to refer to highest offense charged. **Thomas**, 121/332, 49 S. E. 273.

Corrected in open court, upon instruction from judge; no error in allowing. **Fant**, 8 A. 438, 69 S. E. 586.

Count to which applied, where general. **Moran**, 125/35, 53 S. E. 806. Direction of, in criminal case. **Young**, 125/588, 54 S. E. 82.

Direction of verdict for defendant, when proper; refusal to direct, no ground for exception. **Bell**, 15 A. 718, 84 S. E. 150; **Mosley**, 11 A. 19, 74 S. E. 569; **Hudson**, 14 A. 490, 81 S. E. 362.

Effect of general verdict on indictment in two counts. **Morse**, 10 A. 61, 66, 72 S. E. 534.

Effect of special verdict. **Dunbar**, 21 A. 502, 503, 94 S. E. 587.

Finding of, not unduly urged by judge. **Golatt**, 130/18, 21, 60 S. E. 107. Not unduly hastened by directing suspension of deliberation for approaching Sunday. **Moore**, 130/322, 60 S. E. 544.

For lower grade of homicide than that charged. **Nolly**, 124/10, 52 S. E. 19; **Rawls**, 124/11, 52 S. E. 1.

Form and construction of, in criminal case. **Dunbar**, 21 A. 502, 503, 94 S. E. 587.

Form of, effect of failure to charge as to. **Thompson**, 120/132, 47 S. E. 566.

Form of, where indictment has several counts; effect of general verdict. **Tooke**, 4 A. 502, 61 S. E. 917; **Hall**, 8 A. 750, 70 S. E. 211.

Forms of, charge giving, should not omit form of acquittal. **Kearney**, 101/803, 29 S. E. 127, 65 Am. St. R. 344.

Forms of, in murder. **Grant**, 124/758, 53 S. E. 334.

General, on indictment in two counts, where one is not supported, effect of. **Carrington**, 18 A. 105, 88 S. E. 915; **Bragg**, 15 A. 631, 84 S. E. 82.

General, on indictment containing several counts; when not legal. **Sewell**, 23 A. 765, 99 S. E. 320.

General, on indictment in two counts; not sustainable, when one count is not supported by evidence. **Dozier**, 14 A. 473, 81 S. E. 368; **Jones**, 14 A. 535, 81 S. E. 586. Construed as applying to the higher offense. **Scott**, 14 A. 806, 82 S. E. 376.

General, properly treated as based on third count, the court's charge having excluded the first two. **Waver**, 108/775, 33 S. E. 423.

General verdict of guilty on indictment containing several counts; when proper. **Innes**, 19 A. 271, 273, 91 S. E. 339.

General verdict on indictment containing two counts; effect of. **Bishop**, 21 A. 236, 94 S. E. 49.

General, where demurrer to bad count overruled, set aside. When verdict presumed to be based on good count rather than on bad one. **Sutton**, 122/158, 160, 50 S. E. 60.

Guilty, not specifying which offense, where several charged, applied to the highest. **Mitchell**, 6 A. 557, 65 S. E. 326.

"Guilty of keeping whisky at a public place of business," not bad; the words "of business" treated as surplusage. **Gary**, 503, 504, 67 S. E. 207.

Guilty of "transporting whisky," sufficient. **Dunbar**, 21 A. 502, 502, 94 S. E. 587.

Guilty of "misdemeanor," when no basis for judgment. **Smith**, 117/16, 43 S. E. 440.

Indictment in two counts; proper verdict on. **Gailliard**, 16 A. 195, 84 S. E. 837.

Inquiries of judge as to whether the jury were likely to agree on, and remarks when told they were not, not error here. *Jones*, 117/710, 44 S. E. 877.

"Involuntary manslaughter," too uncertain. Evidence and charge of court could not be consulted to ascertain meaning. *English*, 105/516, 31 S. E. 448.

"Involuntary manslaughter," means the higher grade. *Register*, 10 A. 623, 74 S. E. 429; *Thomas*, 121/331, 49 S. E. 273; *Dickerson*, 121/333, 49 S. E. 275.

Judgment affirmed, with direction that accused be discharged. *Ezzard*, 11 A. 30, 74 S. E. 551.

Jurors not heard to impeach, by affidavit that they agreed, before signing it, to recommend pardon. *Robinson*, 120/311, 47 S. E. 968.

Jury's question as to modifying, presumed to refer to finding a lesser offense. *Perdue*, 126/113, 54 S. E. 820.

Motion for new trial, available as remedy for error in receiving. *Frank*, 142/741, 83 S. E. 645, 56 L. R. A. 1915D, 817.

Not amendable, where too indefinite or uncertain, after jury dispersed. *Wells*, 116/87, 42 S. E. 390.

Not in proper form, no error in refusing to receive, or in sending jury to their room, with instruction as to proper form. *Lambert*, 17 A. 348, 86 S. E. 782.

Not invalid, finding "the defendant, Frank Taylor, guilty," on accusation against Frank Naylor. *Naylor*, 145/833, 90 S. E. 74.

Not specifying offense, not require new trial, here. *Johnson*, 121/143, 48 S. E. 951.

Not specifying on which count it is founded, when not illegal. *Williams*, 107/693, 33 S. E. 641.

Not void because not descriptive of offense; "the unlawful shooting of another." *Smith*, 12 A. 667, 78 S. E. 134.

Not void for uncertainty: "shooting another not in his own defense."

Mosley, 11 A. 7, 74 S. E. 569. Effect of failure to charge as to form of verdict. *Id.*

Of guilty on each count, effect of. *Brannon*, 21 A. 328, 330, 94 S. E. 259.

Of "manslaughter" is, in effect, verdict of voluntary manslaughter. *Smith*, 109/479, 35 S. E. 59.

Of manslaughter, on indictment and trial for murder, not treated as acquittal of murder, if accused obtain new trial on his motion. *Brantley*, 132/573, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203.

Of murder, with recommendation "to mercy," effect of. *Tillman*, 136/59, 77 S. E. 876.

Of the particular jury selected, right of accused to. *Oliveros*, 120/241, 47 S. E. 627, 1 Ann. Cas. 114.

On former trial, concealment of, from jury, when not essential. *Smalls*, 105/670, 31 S. E. 571.

Received a moment before one juror entered court-room, when no ground for mistrial. *Patterson*, 122/587, 50 S. E. 489.

Received in absence of accused, not held invalid unless he shows he made no waiver and did not authorize one. *Cawthon*, 119/396, 46 S. E. 897.

Received in absence of accused, not set aside after affirmance of judgment refusing new trial. *Frank*, 142/741, 83 S. E. 645, L. R. A. 1916D, 817.

Received in absence of clerk, but in presence of judge, jury and accused; no cause for reversal. *Robinson*, 128/260, 57 S. E. 315.

Received in absence of counsel for accused, and of clerk, when no error for new trial. *Richards*, 136/67, 70 S. E. 868.

Received in absence of counsel for accused, when no cause for new trial. *Baldwin*, 138/349, 75 S. E. 324.

Received on Sunday, lawful. *Rawlins*, 124/33, 52 S. E. 1.

Reception of, in absence of accused when out on bond, and when in jail; distinction. *Hill*, 118/21, 44 S. E. 820.

Form of, in case of acquittal, should be given. *Calvin*, 118/78, 44 S. E. 848.

Direction of acquittal, no right to demand, upon statement of intention to declare mistrial. *Oliveros*, 118/776, 45 S. E. 596.

Refusal to receive verdict for lower grade than charged, because not warranted, error, where accused does not object to the verdict. *Register*, 10 A. 623, 74 S. E. 429.

Right of judge to refuse to receive, and to retire jury for further deliberation. *Darsey*, 136/502, 71 S. E. 661.

Specifying offense in part, but omitting essential element, amounted to an acquittal ("uttering and publishing" forged writing). *Ezzard*, 11 A. 30, 74 S. E. 551. Verdict a nullity; remedy. *Id.*

To be given reasonable intendment, and held valid if possible. *Gary*, 7 A. 503, 504, 67 S. E. 207.

Not illegal because of inconsistency, where defendant was acquitted on count charging unlawful possession of liquor, and convicted on count charging unlawful sale of liquor. *O'Brien*, 22 A. 250, 95 S. E. 938.

Void indictment no basis for conviction, judgment a nullity; remedy was motion to arrest judgment, where no demurrer or motion to quash had been made. *Beall*, 21 A. 73, 94 S. E. 74.

Trial on, no bar to subsequent prosecution. *Walker*, 12 A. 92, 93, 76 S. E. 762.

Remedies of one convicted under. *McDonald*, 129/243, 58 S. E. 860, 12 Ann. Cas. 701; *McDonald*, 126/536, 55 S. E. 235.

Defect not waivable; trial thereon no basis for plea of former jeopardy. *Renfroe*, 10 A. 38, 72 S. E. 520.

Indictment is, if no offense charged. *McDonald*, 129/243, 58 S. E. 860, 12 Ann. Cas. 701.

Indictment is, where judgment arrested for defect therein. *Hill*, 122/572, 50 S. E. 344.

Votes, buying and selling, indictments sufficient. *Cohen*, 104/734, 30 S. E. 932; *Brown*, 104/736, 30 S. E. 951.

Voting illegally, by tax defaulter at municipal election; indictment sufficient; evidence insufficient. *Banyon*, 108/49, 33 S. E. 845.

Waiver, authority of attorney as to Lyons, 7 A. 55, 66 S. E. 149.

By announcing ready for trial, when not result as to right to be furnished with correct list of witnesses. *Regopoulos*, 115/233, 41 S. E. 619.

By failing to demur. *Draper*, 6 A. 12, 64 S. E. 117. Waiver of irregularity, by not making timely objection. *Scott*, 6 A. 567, 65 S. E. 359.

By failure to object before conviction, as to lack of authority of one acting as solicitor pro tempore. *Davis*, 11 A. 10, 74 S. E. 442.

By not objecting at trial to joint trial, and to failure to serve defendant, in police court case. *Backus*, 7 A. 397, 66 S. E. 1036. **Jury.**

Not shown by counsel's refusal to request instruction, upon judge's inquiry. *Tanner*, 145/71, 88 S. E. 554.

Of arraignment, not possible in absence of accused. *Wells*, 121/368, 49 S. E. 319.

Of arraignment, on one trial, applies also to subsequent trial granted on defendant's motion. *Parker*, 17 A. 252, 87 S. E. 705.

Of cause for mistrial, conduct not amounting to. *Smalls*, 102/31, 29 S. E. 153.

Of constitutional provision, by accused moving for and obtaining new trial. *Brantley*, 132/576, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203.

Of cross-examination by conduct of counsel. *Gale*, 135/355, 69 S. E. 537.

Of defects in indictment by failure to make timely objection. *Lanier*, 5 A. 472, 63 S. E. 536; *Badger*, 5 A. 477, 63 S. E. 532; *Gazaway*, 9 A. 194, 70 S. E. 978.

Of defects in indictment, by not demurring specially. *Isaacs*, 7 A. 799, 68 S. E. 338.

Of defects in indictment. Statement on announcing ready for trial, that the accused demanded all his legal

rights, and would not waive anything but copy of indictment and list of witnesses, not prevent waiver as result of failure to make objection. *Schumpert*, 9 A. 553, 71 S. E. 879.

Of indictment, not result from submitting to trial under accusation in city court, where law requires indictment or presentment by grand jury. *Wright*, 16 A. 216, 84 S. E. 975.

Of formal arraignment by silence. *Brown*, 19 A. 619, 91 S. E. 939; *Perry*, 19 A. 619, 91 S. E. 939; *Hudson*, 117/704, 45 S. E. 66.

Of formal arraignment resulted from demurrer to indictment. *Kincade*, 14 A. 544, 81 S. E. 910.

Of irregularity, by not making timely objection to remark in presence of jurors. *Corbitt*, 7 A. 13, 66 S. E. 152; *White*, 7 A. 22, 65 S. E. 1073.

Of jury trial; right to demand that judge try case without jury (under city court act. *Green*, 6 A. 324, 64 S. E. 1121.

Of objection, by delay. *Kidd*, 10 A. 148, 75 S. E. 266; *Whipple*, 10 A. 214, 73 S. E. 27.

Of objection, by silence of counsel when court asked question. *Powell*, 9 A. 617, 71 S. E. 1013.

Of omission of grand jurors' names from indictment. *Williams*, 107/721, 33 S. E. 648.

Of presence of accused, at reception of verdict, not made by counsel's waiver of his own right to be present. *Lyons*, 7 A. 50, 66 S. E. 149.

Of presence of accused, by his counsel. *Hill*, 118/21, 44 S. E. 820. Of right to make statement, by announcing closed. *Dunwoody*, 118/309, 45 S. E. 412.

Of indictment of illegal grand jury, by plea to merits. *Johnston*, 118/313, 45 S. E. 381; 46 S. E. 488. Of trial by jury. *Hollis*, 118/760, 45 S. E. 617.

Of presence of accused during part of trial. *Miller*, 13 A. 442, 79 S. E. 232. Matters waivable. *Ib.* 445.

Of right to be present when verdict received, acts amounting to; attorney's

waiver sufficient here. *Cawthon*, 119/395, 46 S. E. 897.

Of right to demand indictment in city court. *Grier*, 14 A. 558, 81 S. E. 809.

Of right to demur to defects in the indictment is no waiver of proof essential to conviction, and dispenses with no other essential of legal trial. *Sessions*, 3 A. 13, 59 S. E. 196.

Of right to make argument in criminal case. *Lewis*, 11 A. 14, 74 S. E. 442. Waiver of presence of witness, and agreement to use his affidavit; error in charge of court impairing effect of affidavit. *Parker*, 11 A. 252, 75 S. E. 437.

Of trial by jury in city court, right to withdraw. *Cain*, 102/610, 29 S. E. 426.

Of right to have court instruct jury on manslaughter resulted from counsel's statement that it was not involved. *Threlkeld*, 128/660, 58 S. E. 49. But see *Hill*, 147/650, 95 S. E. 213.

Of special defense by failure to plead. *Brantley*, 132/579, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203.

Of trial rights by accused, and by his counsel, extent of power as to. *Frank*, 142/741, 759, 83 S. E. 645, L. R. A. 1916D, 817.

Of good objection to indictment, by plea to merits. *Johnston*, 118/313, 45 S. E. 381; 46 S. E. 488.

What may be comprehended by. *Wiggins*, 112/749, 38 S. E. 86.

What may be waived by defendant. *Lyons*, 7 A. 50, 66 S. E. 149.

Warrant not necessary, to authorize trial on accusation. *Harris*, 11 A. 140, 141, 74 S. E. 895; *Brown*, 109/570, 34 S. E. 1031.

Weapon, allegation of, not too general: "a certain knife and other sharp instruments" unknown. *Hall*, 133/177, 65 S. E. 400.

Allegations as to, sufficient. *Brown*, 13 A. 437, 79 S. E. 231. Two kinds alleged; proof of killing by either, allowed. *Ib.*

Carrying concealed; indictment charging the offense in general terms

may be good; conviction under, as bar to prosecution for acts done within two years before such indictment. **Morgan**, 119/965, 47 S. E. 567.

Carrying concealed; indictment need not allege that it was "manufactured and sold for the purpose of offense and defense." **Nixon**, 121/144, 48 S. E. 966.

Carrying concealed; plea of former conviction not supported by facts here. **Morgan**, 119/965, 47 S. E. 567.

Pointing at another; failure to allege that it was intentionally so pointed was ground of motion in arrest of judgment. **Herrington**, 121/141, 48 S. E. 908.

Pointing weapon at another; indictment void for lack of essential allegations. **Renfro**, 10 A. 39, 72 S. E. 520. Evidence warranting conviction. *Id.*

Sending weapons out with jury, no ground for new trial, when. **Weldon**, 21 A. 332, 94 S. E. 326.

Wife hired out for immoral purposes; sufficiency of accusation. **Lasseter**, 17 A. 323, 86 S. E. 743.

Of accused, homicide for offense upon, when not justified. **Perry**, 102/366, 30 S. E. 903.

Wilful, indictment for trespass need not allege the act was. **Shrouder**, 121/615, 49 S. E. 702.

Meaning of, in indictment. **Smith**, 126/546, 55 S. E. 475.

Meaning of, in penal statute. **Roby**, 121/683, 49 S. E. 694, 68 L. R. A. 601.

"Wilful and wanton," when court should define in charging jury. **Manning**, 6 A. 240, 64 S. E. 710.

"Wilfully," in indictment includes intentionally. **King**, 103/265, 30 S. E. 30. Meaning of, in penal statute. **Kendall**, 9 A. 794, 795, 72 S. E. 164. Omission of word from indictment, as cause to arrest judgment. **Herndon**, 23 A. 538, 99 S. E. 11.

Withdraw from jury case on trial for misdemeanor, and require bond for appearance of accused to answer charge of felony in superior court, when judge of city court has no right to. **Ingram**, 124/448, 52 S. E. 759.

Withdrawal of plea of guilty. **Foster**, 22 A. 109, 95 S. E. 529. When allowed. **Griffin**, 12 A. 615, 77 S. E. 1080.

Can not be made as a matter of right after sentence has been orally pronounced. **Sanders**, 18 A. 786, 90 S. E. 728.

See catchword "Plea."

Witness, oath of, before grand jury is no basis for presentment or indictment, if not made in that particular case. **Switzer**, 7 A. 7, 12, 13, 65 S. E. 1079.

Witnesses. Indictment presumed founded solely on testimony of those named thereon. **Palmer**, 23 A. 84, 97 S. E. 460. See catchwords "List of Witnesses;" *Witness*.

Indictment given to jury, with name of witness thereon erased and "dead" written opposite; when not ground for reversal. **Martin**, 5 A. 606, 63 S. E. 605.

Words, as defense to assault and battery. **Samuels**, 103/4, 29 S. E. 427; **Nixon**, 101/574, 28 S. E. 971.

No justification for assault and battery, where not used in presence of assailant. **Cowart**, 9 A. 169, 70 S. E. 891.

Not justify assault and battery by adult on child nine years old. **McKinley**, 121/193, 48 S. E. 917.

As justification for assault. **Walker**, 117/323, 43 S. E. 737; **McKinney**, 119/468, 469, 46 S. E. 719; **Mathews**, 125/50, 54 S. E. 196. Not include written words. **Haygood**, 10 A. 394, 73 S. E. 423; **Bedford**, 5 A. 462, 63 S. E. 515; **Rumsey**, 5 A. 803, 63 S. E. 921.

As justification of attack with pocket-knife; whether sufficient, a jury question; no error in refusing to charge jury that they would not justify attack. **Amerson**, 18 A. 177, 88 S. E. 998.

Charge to jury, as to use of opprobrious words "calculated" to cause breach of peace, not error; context shows that "calculated" was treated as synonymous with "tending." **Josey**, 20 A. 85, 92 S. E. 763.

However vile, do not justify taking human life. *Smarrs*, 131/22, 61 S. E. 914.

Indictment for using obscene language in presence of female, when sufficient. *Morris*, 6 A. 395, 65 S. E. 58. Words considered in connection with explanatory innuendo; time, place, circumstances, and intent considered. 1

In female's hearing are in her presence; charge to this effect, not error, especially in view of charge as to burden to show defendant's knowledge of her presence. *Roberts*, 123/505, 51 S. E. 505.

Opprobrious and abusive, sufficiency of provocation for, a question exclusively for jury; error in charging that simply saying "howdy" is no justification. *Hamilton*, 9 A. 402, 71 S. E. 593.

Opprobrious, no justification to officer for beating prisoner. *Moody*, 120/868, 48 S. E. 340; *Elmore*, 15 A. 461, 83 S. E. 799. But this does not prevent prosecution for using such words to the officer. *Elmore*, 15 A. 461, 83 S. E. 799.

Opprobrious, justification for. *Binder*, 13 A. 381, 383, 79 S. E. 216.

Opprobrious words as provocation for assault; no error in charging as to. *Dawson*, 18 A. 176, 88 S. E. 990.

Plural epithet alleged to have been directed to one person, no reason for quashing indictment. *Wiggins*, 17 A. 748, 88 S. E. 411.

Sufficiency of provocation for profane and abusive language, a jury question; burden on State to show that there was not sufficient provocation. *Ogletree*, 18 A. 41, 88 S. E. 751.

When proper to charge jury on words, threats, etc., as provocation. *Garner*, 6 A. 789, 65 S. E. 842.

Threats, menaces, etc., in law of manslaughter and justifiable homicide. *Butler*, 143/484, 85 S. E. 340.

Threats, menaces, and gestures, as excitement of reasonable fears. *Freeman*, 112/48, 52, 37 S. E. 172. Do not justify killing, without manifest intent to use weapon presented. *Chestnut*, 112/368, 37 S. E. 384.

Whether justification for mere battery, jury question. *Patterson*, 14 A. 120, 80 S. E. 213.

Whether opprobrious, and sufficiency of provocation for their use, to be submitted to jury. *Beckworth*, 6 A. 859, 65 S. E. 1075.

Alone no justification for shooting. *Jackson*, 14 A. 608, 81 S. E. 905.

Written instrument, set forth according to its tenor must be proved as laid. *Thompson*, 1118/330, 45 S. E. 410.

5. EVIDENCE.

Absent witness, evidence of, on former trial, when not admitted. *Robinson*, 128/254, 57 S. E. 315; *Taylor*, 126/557, 55 S. E. 474.

Accident; presumption that stabbing was accidental. *Newsome*, 19 A. 265, 91 S. E. 441.

Presumption that fire resulted from. *Sims*, 14 A. 28, 79 S. E. 1133.

Shooting by, evidence warranting rejection of theory of. *Beddingfield*, 13 A. 623, 79 S. E. 581.

Killing by; theory not supported. *Anderson*, 146/193, 91 S. E. 26; *Robinson*, 135/217, 69 S. E. 113; *Whitfield*, 135/248, 69 S. E. 114.

Killing by, evidence not requiring charge to jury on theory of. *August*, 20 A. 168, 92 S. E. 956.

Accomplice, acts and declaration of, when admissible against another. *Carter*, 106/373, 32 S. E. 345, 71 Am. St. R. 262.

Conviction on testimony of, not authorized without corroboration by some independent fact which itself leads to the inference not only that the crime was committed but that the accused was implicated in its commission. *Braxley*, 17 A. 197, 86 S. E. 425.

Corroboration of. *Baker*, 121/189, 48 S. E. 967; *Harrell*, 121/607, 49 S. E. 703; *Knight*, 143/678, 85 S. E. 915; *Walker*, 118/34, 44 S. E. 850. Statement of common law and practice thereunder, and of our statutory law. *Stone*, 118/705, 45 S. E. 630, 98 Am.

St. R. 145. Rule of law as to, not applicable to accessory after the fact, indicted jointly with accused. **Walker**, 118/757, 45 S. E. 608.

Corroborated by confession of accused. **Hugle**, 147/35, 92 S. E. 646.

Corroborating circumstances not sufficient here. **Butler**, 17 A. 522, 87 S. E. 712. Rule requiring corroboration of, not applied to misdemeanor case. **Martin**, 17 A. 372, 86 S. E. 945.

Corroboration of, by circumstances, insufficient here. **Smith**, 5 A. 833, 63 S. E. 917. What corroboration necessary in felony case; proof of corpus delicti not sufficient corroboration, as to guilt of another. **Altman**, 5 A. 833, 63 S. E. 928.

Corroboration of, by slight evidence may be sufficient; its sufficiency is a jury question. **Brown**, 18 A. 288, 89 S. E. 342; **Durden**, 23 A. 84, 97 S. E. 445.

Corroboration of, charge of court as to, sufficient, in absence of request. **Carson**, 22 A. 551, 96 S. E. 500.

Corroboration of; charge of court considered. **Ballard**, 11 A. 106, 74 S. E. 846. Declarations of accomplice, when not admissible. **Hicks**, 11 A. 265, 75 S. E. 12.

Corroboration of, erroneous charge as to. **Howard**, 109/137, 34 S. E. 330; **Chapman**, 109/158, 34 S. E. 369.

Corroboration of, must connect the accused, not merely raise grave suspicion. **Taylor**, 110/151, 35 S. E. 161.

Corroboration of, necessary. Woman who shares in incest is such. **Yother**, 120/204, 47 S. E. 555; **Durden**, 120/860, 48 S. E. 315. Principal thief not accomplice of receiver of stolen goods. **Birdsong**, 120/850, 854, 48 S. E. 329, 330. Female raped, though not accomplice, must be corroborated. **Davis**, 120/433, 439, 48 S. E. 180.

Corroboration of; what necessary. **Montford**, 144/582, 87 S. E. 797; **Milner**, 7 A. 82, 66 S. E. 280; **Smith**, 7 A. 781, 68 S. E. 335. Not essential in misdemeanor case. **Beaty**, 7 A. 328, 66 S. E. 808.

Circumstances here were not sufficient corroboration. **Stokes**, 19 A. 235, 91 S. E. 271. Not sufficient. **Leviater** (burglary), 21 A. 50, 93 S. E. 513; **Lawson**, 21 A. 140, 94 S. E. 52.

Corroboration of, what sufficient. **Anglin**, 14 A. 566, 81 S. E. 804. Corroboration by circumstances. **Butts**, 14 A. 821, 82 S. E. 375. What circumstances are sufficient. **Baker**, 14 A. 578, 81 S. E. 805; **Rice**, 16 A. 128, 84 S. E. 609; **Baldwin**, 15 A. 176, 178, 84 S. E. 727.

Dead, proof of his testimony on former trial. **Hardin**, 107/718, 33 S. E. 700.

Error in charging law as to, where the evidence showed merely that the accused, a minor, was present when the crime was committed. **Sparks**, 111/830, 35 S. E. 654.

Evidence of; instructions as to. **Hardin**, 107/719, 33 S. E. 700.

Extent of corroboration, to support conviction. **Rawlins**, 124/49, 52 S. E. 1. Seduced woman is no accomplice. **Washington**, 124/423, 52 S. E. 910.

Failure to define "accomplice," in charge to jury, in absence of request, not require new trial. **Baker**, 14 A. 578, 81 S. E. 805; **Butts**, 14 A. 821, 82 S. E. 375.

In felony, corroborated by circumstances. **McCroory**, 101/779, 28 S. E. 921.

In felony, sufficient corroboration of. **Dixon**, 116/186, 42 S. E. 357.

In felony the sole witness, circumstances not tending to connect accused, conviction illegal. **Brandon**, 108/786, 33 S. E. 811.

Inquiry whether acts were under influence of threats and menaces. **Montford**, 144/582, 87 S. E. 797.

Intimacy between alleged accomplice and the defendant, a circumstance of considerable probative value. **Bishop**, 9 A. 208, 70 S. E. 976.

Joint defendant pleading guilty, not necessarily accomplice, so as to require corroboration. **Powell**, 14 A. 484, 81 S. E. 396. Evidence not requiring charge to jury on law as to. *Ib.*

Jury may find that a witness is not an accomplice and may convict on his uncorroborated testimony, though he be a codefendant who has pleaded guilty. *Curtis*, 15 A. 678, 85 S. E. 980.

Language of charge to jury, not subject to exception that it authorized conviction on testimony of accomplice, without more. *Timmons*, 14 A. 802, 82 S. E. 378.

Not sufficiently corroborated. *Courson*, 21 A. 153, 94 S. E. 53.

Not sufficiently corroborated by evidence as to tracks and possession of money, here. *Lawson*, 21 A. 140, 94 S. E. 52.

Omission to charge jury on corroboration of, without request; not require new trial. *Baker*, 14 A. 578, 81 S. E. 805.

One informed of intent to commit crime and afterward concealing it, is not. *Bradley*, 2 A. 622, 58 S. E. 1064.

Proper charge to jury as to. *Butts*, 13 A. 274, 79 S. E. 87. Accomplice's testimony as to felony (incestuous adultery), uncorroborated, not sufficient to convict. *Jennings*, 13 A. 680, 79 S. E. 756.

Purchaser of liquor is not, of seller. *Gamble*, 4 A. 845, 62 S. E. 544.

Receiver of stolen goods is not, with actual thief. *Springer*, 102/447, 30 S. E. 971; *Bridges*, 9 A. 235, 70 S. E. 968. What constitutes an accomplice. *Hays*, 9 A. 829, 72 S. E. 285.

Requiring corroboration; improper test. *Hunter*, 133/79, 65 S. E. 154.

Rule requiring corroboration, not applied to misdemeanor case, but fact that he is accomplice may be considered in weighing his testimony. *Brooks*, 12 A. 693, 78 S. E. 143; *Davis*, 23 A. 5, 97 S. E. 263. Seduced woman is not *Keller*, 102/507, 31 S. E. 92.

Statement was not admissible as declaration of, on separate trial of accused jointly indicted. *Gibbs*, 144/166, 86 S. E. 543.

Testimony of, need not be corroborated, as to misdemeanor. *Gamble*, 4 A. 845, 62 S. E. 544.

Sufficient corroboration of testimony of accomplice in forgery. *Curtis*, 15 A. 680, 85 S. E. 980.

To incest, not corroborated by her own testimony as to prior occurrences, nor by her pregnancy. But acts and declarations of the accused may corroborate her. *Taylor*, 110/151, 35 S. E. 161.

To incest, uncorroborated testimony of, not sustain conviction. *Solomon*, 113/192, 38 S. E. 332.

Uncorroborated testimony of one who admitted and afterwards denied complicity could be accepted by jury as sufficient to connect the accused with the crime. *Ware*, 18 A. 107, 89 S. E. 155.

Verdict upheld on the theory that jury found that the codefendant testifying was not an accomplice. *Hays*, 9 A. 830, 72 S. E. 285.

What constitutes. *Montford*, 144/582, 87 S. E. 797; *Hargrove*, 125/273, 54 S. E. 164. Corroboration of, what sufficient; a matter for the jury. *Ib.*

What corroboration necessary. *Bishop*, 9 A. 205, 70 S. E. 976. What sufficient, a matter for the jury. *Hays*, 9 A. 829, 72 S. E. 285.

What corroboration of, necessary. *Chapman*, 112/56, 37 S. E. 102. Jury must be distinctly informed what is, leaving them to determine whether witness is. *Suddeth*, 112/407, 37 S. E. 747.

What necessary to constitute. *Walker*, 118/757-8, 45 S. E. 608; *Bishop*, 118/799, 45 S. E. 614; *Springer*, 102/447, 30 S. E. 971.

Whether one knowingly receiving stolen goods, was accomplice, a jury question. *Wilson*, 8 A. 816, 79 S. E. 193.

Witness not treated as, merely because he is jointly indicted with accused on trial. *Davis*, 122/564, 50 S. E. 376.

Woman consenting to sexual intercourse was, though some coercion was used. *Whidby*, 121/588, 49 S. E. 811.

Acts and sayings of, when admissible. *Baker*, 121/189, 48 S. E. 967;

Harrell, 121/607, 49 S. E. 703; **Barrow**, 121/187, 48 S. E. 950.

Accessory after the fact is not; nor is receiver of stolen goods accomplice of principal thief. **Bradley**, 2 A. 622, 58 S. E. 1064.

Acts and conduct of accused, testimony of, when not admissible in his favor. **Hall**, 141/7, 80 S. E. 307. Admitted against him. **Frank**, 141/243, 80 S. E. 1016.

Similar, of the accused, prior to the crime charged, admissibility of evidence as to. **Clarke**, 5 A. 95, 62 S. E. 663.

Additional evidence, received after State closed case, no abuse of discretion. **Glasco**, 137/336, 73 S. E. 578.

Admission and confession defined and distinguished. **Riley**, 1 A. 651, 57 S. E. 1031.

Bad faith in obtaining, no ground for excluding. **Sanders**, 113/269, 38 S. E. 841.

By accused, whether admissibility governed by principle applied to confessions. **Fuller**, 109/811, 35 S. E. 298.

By failure to deny accusation of bystander. **Thurman**, 14 A. 543, 81 S. E. 796.

Conduct or statements indicating consciousness of guilt. **Ryals**, 23 A. 86, 97 S. E. 444.

Evidence not showing. **Allred**, 126/537, 55 S. E. 178.

Incriminating. **Weaver**, 135/321, 69 S. E. 488; **Taylor**, 135/622, 70 S. E. 237; **Roberson**, 135/654, 70 S. E. 175.

Incriminating, by stipulation against gaming on leased premises, if other facts show that it was a subterfuge. **Rivers**, 118/44, 44 S. E. 859. Accused said he had intended to overpower jailer and escape. **Bines**, 118/320, 45 S. E. 376, 68 L. R. A. 33. By silence, as to gaming, not made if circumstances call for no denial. **Graham**, 118/807, 45 S. E. 616.

Incriminating, distinct from confession of guilt. **Lucas**, 146/315, 328, 91 S. E. 72; **Ransom**, 2 A. 826, 59 S. E. 101.

Incriminating; effect of silence, etc. **Wright**, 136/130, 70 S. E. 1102.

Incriminating, no basis for charge on confessions. **Powell**, 101/10, 29 S. E. 309, 65 Am. St. R. 277.

Incriminating, when admissible. Whether free and voluntary, for jury. **Dixon**, 116/186, 42 S. E. 357. Of homicide, on trial for murder. **Somers**, 116/535, 42 S. E. 779. No basis for charge on confessions of guilt. **Simmons**, 116/583, 42 S. E. 779.

Incriminating, when not excluded as induced by hope of benefit or fear of injury. **Waycaster**, 136/95, 100, 70 S. E. 883.

Inculpatory, rule as to admissibility of confessions applied to. **Mill**, 3 A. 414, 60 S. E. 4; **Brown**, 3 A. 479, 60 S. E. 216.

Inculpatory statements in presence of accused, not met by denial, admissible, when. **Gates**, 20 A. 171, 92 S. E. 974.

In pleading, admissibility of. **Whitaker**, 11 A. 220, 75 S. E. 258.

Jury may believe part and reject part of. **Cook**, 114/523, 40 S. E. 703.

Not authorizing charge to jury on confessions. **Smith**, 115/586, 41 S. E. 984.

Not refuting statement heard in a conversation, as "a quasi admission" of guilt. **McCarty**, 23 A. 80, 97 S. E. 446.

Of a fact waived error in receiving illegal evidence to prove it. **McCoy**, 124/218, 52 S. E. 434.

Of agency, by paying freight and receiving goods. **Leps**, 120/139, 47 S. E. 572. Of marriage, admissible on trial for bigamy. **McSein**, 120/175, 47 S. E. 544.

Of conspirator, when admissible against coconspirator. **Baker**, 17 A. 279, 86 S. E. 530.

Of guilt on trial for violation of city ordinance, admissible on trial for violation of State law, when. **Cooper**, 12 A. 561, 77 S. E. 878.

Of homicide, coupled with exculpatory statement, no basis of presumption. **Perkins**, 124/6, 52 S. E. 17; **Green**, 124/343, 52 S. E. 431; cf.

Mann, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934. Erroneous statement of, in charge to jury, excluding theory of prisoner's statement. **Garland**, 124/832, 53 S. E. 314.

Of homicide, made at coroner's inquest, may be proved orally. **Green**, 124/343, 52 S. E. 431.

Of homicide, overheard, competent evidence. **Williams**, 139/591, 77 S. E. 818.

Of homicide, with and without exculpation. **Webb**, 140/779, 79 S. E. 1126; **Brannon**, 140/787, 80 S. E. 7.

Of husband in conversation with wife, overheard by witness, received in evidence. **Ford**, 124/793, 53 S. E. 335.

Judge charging jury should not use expression, "admissions of guilt," in such way as to indicate that he refers to confessions, and not merely incriminatory statements. **Hawkins**, 8 A. 705, 70 S. E. 53.

Of killing, answer to accusation relevant as. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17. Of participation therein, by silence after companion's statement. **Davis**, 114/109, 39 S. E. 906. To attorney, in anticipation of employment, not received. **Haywood**, 114/112, 39 S. E. 948.

Or confession, not in terms stating time and place, when admissible. **Cook**, 124/653, 53 S. E. 104.

Of negligence, causing injury, statements in presence of one suffering therefrom, if silently acquiesced in by him, may amount to. **Holston**, 116/656, 43 S. E. 29.

Of presence and seeing crime committed, effect of. **Kidd**, 101/528, 28 S. E. 990.

Silence as; when not. **Chapman**, 109/159, 34 S. E. 369; **Brantley**, 115/230, 41 S. E. 695; **Simmons**, 115/576, 41 S. E. 983.

Inculpatory, by witness, at trial; admissibility of, on his subsequent trial; cases collected. **Adams**, 129/248, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158.

In prisoner's letter, not excluded because it became known through letter

being opened by the sheriff after it had been entrusted to him sealed, to be mailed. **Sanders**, 113/267, 38 S. E. 841.

Not sufficient, with other evidence in this case, to sustain conviction. **Boatwright**, 103/431, 30 S. E. 256.

Of accused, when received. Bigamy. **Murphy**, 122/149, 50 S. E. 48. Murder. **Davis**, 122/564, 50 S. E. 376; **Grant**, 121/742, 2, 50 S. E. 946.

Of prosecutor not received as admission of party to the case. **Bridges**, 110/246, 34 S. E. 1037.

To officer in charge of accused, when not excluded from evidence. **Fuller**, 109/809, 35 S. E. 298.

When equivalent to confession or plea of guilty. **Mize**, 135/295, 69 S. E. 173.

When not a confession. **Owens**, 120/296, 48 S. E. 21.

Whether ambiguous declaration amounted to, was for jury, under proper instruction. **Allred**, 126/537, 55 S. E. 178.

Whether amounting to confession or to mere incriminating statement. **Weaver**, 135/321, 69 S. E. 488.

Whether shown here. **Coleman**, 15 A. 339, 340, 83 S. E. 154.

Adultery. Parol evidence, "I think he is a married man. He has a wife and children," sufficient to show marriage. Venue proved. **Walters**, 23 A. 666, 99 S. E. 138.

Affidavit introduced by agreement, instead of oral testimony; error in charging jury that they might believe as much or as little of it as they pleased. **Parker**, 11 A. 252, 75 S. E. 437.

Used as evidence on former trial, admissibility of, and of testimony as to contradictory statements of affiant. **Parker**, 17 A. 252, 87 S. E. 705.

Agent's possession of goods in burglarized house raises presumption of ownership by principal, when. **Hall**, 7 A. 115, 66 S. E. 390.

Non-consent to taking oysters from private bed, not shown that the taking was without authority from owner, when. **Harris**, 14 A. 574, 81 S. E. 815.

Agreement to introduce copy, not hinder introduction of other copy after proving loss of original. *Woods*, 101/526, 28 S. E. 970.

Alibi; See *Criminal Law*, 4, catchword, *Alibi*.

Allegata and probata. Accusation of pointing pistol at A and B, not sustained by proof of pointing at A and D. *Bone*, 11 A. 128, 74 S. E. 852.

Accusation of sale of drugs to a named person, not supported by proof of sale to another. *Cooper*, 13 A. 697, 79 S. E. 908.

Allegation as to a "bay horse mule, named Jim," not sustained by proof as to a "black horse mule, known as the Hill mule." *Williams*, 13 A. 338, 79 S. E. 207.

Allegation as to ownership by A, not proved by showing title in A and B. *Williams*, 13 A. 338, 79 S. E. 207.

Allegation of shooting "in car," supported by proof of shooting on car, from step. *Andrews*, 8 A. 700, 702, 70 S. E. 111.

Allegation that representation was made to another member of firm; variance. *Broznack*, 109/514, 35 S. E. 123.

Assault alleged, battery proved, in prosecution or riot, no variance. *Carter*, 7 A. 44, 65 S. E. 1072.

Conformity of proof to unnecessarily full descriptive averments, when necessary; cases collected. *Moore*, 13 A. 15, 78 S. E. 772.

Contract with individual, alleged contract with him in representative capacity proved; fatal variance. *Roberts*, 6 A. 574, 65 S. E. 359. No material variance as to manner of using rocks in assault. *Varner*, 6 A. 785, 65 S. E. 841.

Demand for payment, sufficiently shown by presentation of bill for payment. *Foss*, 15 A. 478, 83 S. E. 880.

Difference as to name of church, not material here. *Edwards*, 121/591, 49 S. E. 674. As to name of corporation. *Smith*, 121/618, 49 S. E. 677.

Different conversions alleged, one proved, conviction upheld. *Hagood*, 5

A. 80, 62 S. E. 641. Difference between company and individual. *Ib.* 84.

Failure to charge jury, that the proof must correspond with the allegations in the indictment, not error, in absence of request and in view of instructions given. *Garrett*, 21 A. 801, 95 S. E. 301.

Failure to charge jury (without request) that proof must correspond substantially with description in indictment, not require new trial. *Timmons*, 14 A. 802, 82 S. E. 378.

Fatal variance as to date of contract. *Green*, 6 A. 324, 64 S. E. 1121.

Fatal variance, where accusation of larceny alleged ownership in A, B, and C, and possession in A, and the proof showed joint ownership in A and others, not B and C. *Horton*, 21 A. 120, 93 S. E. 1012.

Immaterial variance as to amount advanced under contract with laborer. *Mitchell*, 15 A. 804, 84 S. E. 205.

Indictment charging conjunctively different kinds of gaming ("cards, dice, and balls"), supported by proof of one kind. *Hubbard*, 123/17, 51 S. E. 11.

Larceny from A's "outhouse" alleged, larceny from his "cottonseed house" proved; no material variance. *Dowdy*, 6 A. 159, 64 S. E. 489.

"50 cigars of the value of \$2" charged; proof of larceny of box of cigars of value of \$1.90; no material variance. *Warren*, 12 A. 695, 78 S. E. 202.

Material variance in description of crop. *Wyatt*, 16 A. 817, 81 S. E. 802.

Material variance in description of mule. *Williams*, 16 A. 34, 84 S. E. 494.

Material variance in failing to prove non-essential allegations. *Caswell*, 5 A. 487, 63 S. E. 566; *Southern Express Co.*, 23 A. 67, 71, 97 S. E. 550.

No fatal variance as to name of woman with whom adultery was committed. *Walker*, 14 A. 587, 81 S. E. 797.

No material variance as to opprobrious epithet, where the words alleged were "God damned hog-thieving sons

of bitches," and those proved were, damned hog-stealing son of a bitch." *Wiggins*, 17 A. 749, 88 S. E. 411.

No material variance between allegation as to entrusting timber for A's benefit, and proof of entrusting it to be sawed into lumber for his benefit. *Chaffin*, 5 A. 368, 63 S. E. 230.

No variance as to money stolen and ownership. *Martin*, 17 A. 612, 87 S. E. 844.

No variance between the names "Maria" and "Marie." *Watkins*, 18 A. 500, 89 S. E. 624.

No variance caused by proof as to third person furnishing money used by alleged buyer. *Wilburn*, 8 A. 29, 68 S. E. 460.

Offense shown to have been committed in a different manner from that alleged, conviction set aside, when. *Erwin*, 117/296, 43 S. E. 719.

Payment alleged, attempt to obtain payment proved; no material variance, where defendant was convicted of attempt. *Foss*, 15 A. 479, 83 S. E. 880.

Possession of 40 gallons of liquor alleged; possession of 30 gallons proved; conviction upheld. *Elsie*, 21 A. 501, 94 S. E. 627.

Proof allowed as to any number of transactions charged in indictment and included in its terms, where it charges the offense generally, though also containing specific allegations. *Tolbert*, 16 A. 311, 85 S. E. 267; *White*, 9 A. 558, 71 S. E. 879.

Proof that harness in defendant's possession was identified by prosecutor as his own, insufficient to support allegation describing stolen harness as "black-leather" harness. *Moore*, 13 A. 15, 78 S. E. 772.

Representations alleged to have been made to A, proved to have been made to B in A's presence; no material variance, when. *Foss*, 15 A. 478, 83 S. E. 880.

Rule as to proof of unnecessary allegations. *Heard*, 113/450, 39 S. E. 118.

Several acts charged conjunctively, one proved, conviction upheld, when. *Brazil*, 117/32, 43 S. E. 460.

Substantial conformity as to color of cow. *Timmons*, 14 A. 802, 82 S. E. 378. Fatal variance as to posted lands described in indictment for trespass. *Ballew*, 14 A. 427, 81 S. E. 396.

Substantial conformity as to hog's spots and color. *Holmes*, 20 A. 181, 92 S. E. 963.

Variance, as to name of person killed; when not material. *Powell*, 9 A. 614, 71 S. E. 1013.

Variance as to weapon or instrument used in homicide did not prevent conviction. *Watson*, 21 A. 637, 94 S. E. 857; *Burney*, 22 A. 622, 97 S. E. 85.

Variance as to words charged in indictment for use of obscene language not material, when. *Sherrer*, 17 A. 335, 86 S. E. 735.

Variance between allegation as to "telephone" poles and proof as to "telegraph" poles, not material here. *Carver*, 11 A. 29, 74 S. E. 556.

Variance immaterial, as to part of person on which liquor was kept, where offense charged was violation of ordinance prohibiting possession on person for purpose of sale. *Collins*, 17 A. 817, 88 S. E. 716.

No substantial variance as to profane language. *Cleveland*, 22 A. 124, 95 S. E. 540.

Variance not material; larceny of "Overland" automobile; proof of larceny of "Wyllis-Overland" automobile of same number, model, etc., without proof that these names were applied to different types of automobiles. *Stewart*, 23 A. 139, 97 S. E. 871.

When State not restricted to proof of a particular sale, under indictment for liquor-selling. *Davis*, 105/783, 32 S. E. 130.

Whether material variance between description in indictment ("barrow hog, color white, and black spotted") and proof ("black and white spotted hog"). *Paulk*, 5 A. 573, 63 S. E. 659.

Animus of accused, admissibility of testimony to show. *Scrutchens*, 146/189, 91 S. E. 25.

Another crime than that for which accused is on trial for, admissibility of evidence as to. *Cawthon*, 119/396, 46 S. E. 897.

Appeals of death, inquisitions against deodands, and prosecutions for murder, presumptions as to, after a year and a day, not applied. *W. & A. R. Co.*, 104/390, 30 S. E. 874.

Arrest and search, admissibility of evidence obtained by. *Brown*, 15 A. 484, 83 S. E. 890; *Holloway*, 16 A. 143, 84 S. E. 590; *Stephens*, 16 A. 144, 84 S. E. 560; *Heimer*, 15 A. 588, 589, 85 S. E. 821; *Underwood*, 13 A. 206, 78 S. E. 1103; *Pitts*, 14 A. 283, 80 S. E. 510; *Cooper*, 14 A. 464, 81 S. E. 364; *Scott*, 14 A. 806, 82 S. E. 376. **Objection of such evidence, held too late,** *Butler*, 14 A. 450, 81 S. E. 370.

Admissibility of evidence obtained by; conflict of decisions settled by answer of Supreme Court to certified questions. *Smith*, 17 A. 693, 88 S. E. 42; *Calhoun*, 17 A. 705, 88 S. E. 586; *Angry*, 17 A. 712, 88 S. E. 213.

"Third degree" methods condemned. *Underwood*, 13 A. 214, 78 S. E. 1103. **Evidence obtained by arrest, as to possession of liquor, etc., admissible, when.** *Weatherington*, 13 A. 408, 79 S. E. 240.

Illegal, admissibility of evidence obtained by. *Warren* 6 A. 18, 64 S. E. 111; *Davis*, 4 A. 318, 61 S. E. 404; *Glover*, 4 A. 455, 61 S. E. 862; *Croy*, 4 A. 456, 61 S. E. 848; *Tooke*, 4 A. 508, 61 S. E. 917; *Jones*, 4 A. 741, 62 S. E. 482. **See** *Ivey*, 4 A. 831, 62 S. E. 565; *Jenkins*, 4 A. 864, 62 S. E. 574; *Stoker*, 23 A. 11, 97 S. E. 273; *English*, 23 A. 81, 97 S. E. 445; *Corley*, 23 A. 480, 98 S. E. 401; *Sykes*, 23 A. 547, 99 S. E. 55; *Page*, 23 A. 548, 99 S. E. 55.

Illegal, effect of voluntary submission to; charge to jury as to, not authorized by evidence. *Wiggins*, 14 A. 315, 80 S. E. 724. **Voluntary submission not shown by giving bond.** *Id.*

Illegal, with unlawful search and seizure, evidence procured by, not admissible. *Hughes*, 2 A. 29, 58 S. E. 390; *Sherman*, 2 A. 148, 58 S. E. 393; *Gainer*, 2 A. 126, 58 S. E. 295; *Sherman*, 2 A. 686, 58 S. E. 122.

Unlawful, evidence procured from person by, not admissible; aliter as to search of property. *Smith*, 3 A. 326, 59 S. E. 934.

Voluntary submission to arrest; admissible testimony. *Dixon*, 12 A. 17, 76 S. E. 794.

Voluntary submission to, excluded from evidence. *Williams*, 23 A. 129, 97 S. E. 563.

See catchword, "Search."

Association of defendant with one connected by evidence with the crime, admissibility of testimony as to. *Thompson*, 4 A. 649, 62 S. E. 99.

Attempts prior to the crime charged, admissibility of proof as to. *Sullivan*, 121/186, 48 S. E. 949.

Bad feeling between fathers of accused and of deceased, evidence of, when admissible. *Rawlins*, 124/32, 52 S. E. 1.

Barroom, opinion of witness as to proprietor's knowledge of keeping open, inadmissible. *Rooney*, 108/774, 33 S. E. 646.

Behavior of accused, subsequently to time of offense, relevancy of. *Grant*, 122/740, 50 S. E. 946.

Bigamy. Woman married to defendant was competent witness, where former marriage was proved and divorce or death of husband was not shown. *Pitts*, 22 A. 247, 95 S. E. 935.

Bloodhound's conduct in following tracks, admissibility of evidence as to. *Fite*, 16 A. 22, 84 S. E. 485; *Aiken*, 16 A. 848, 86 S. E. 1076.

Burden of proof, and presumption of intent. *Barnes*, 3 A. 333, 59 S. E. 937.

Inaccurate instruction as to, not misleading to jury. *Grantham*, 120/160, 47 S. E. 518. **Is on State; and converse of rule as to circumstantial evidence does not apply to such evidence if introduced by defense.** *Sikes*, 120/494, 48 S. E. 153.

In prosecution for cheating, etc. *Denney*, 2 A. 146, 58 S. E. 318. That evidence obtained by search was procured after legal arrest. *Sherman*, 2 A. 148, 58 S. E. 393.

Not cast on defendant by instruction to jury that if they found his contentions to be true, they should acquit him. *Odum*, 21 A. 313, 94 S. E. 257.

Of guilt, shifted by evidence of specified facts; validity of law so providing. *Kunsberg*, 147/591, 95 S. E. 12.

On accused to justify or mitigate homicide, after proof of his commission of it. *Elliott*, 132/758, 64 S. E. 1090.

On State to establish guilt beyond reasonable doubt. *Turner*, 131/762, 63 S. E. 294; *Mize*, 135/295, 69 S. E. 173; *Mills*, 133/155, 65 S. E. 368. See *Pride*, 133/445, 66 S. E. 259; *Raysor*, 132/237, 63 S. E. 786.

To show circumstances of mitigation in homicide. *Delk*, 135/312, 69 S. E. 541, 22 Ann. Cas. 105.

Of defense, not to reasonable certainty, but by preponderance of evidence. *Polk*, 148/34, 95 S. E. 988.

On accused to show provocation for using obscene language in female's presence. *Holcombe*, 5 A. 53, 62 S. E. 647. On one tried for selling malt liquor, to show it was not intoxicating. *Stoner*, 5 A. 717, 63 S. E. 602.

That accused was of class excepted from operation of statute, on him. *Kitchens*, 116/849, 43 S. E. 256.

On State to establish allegations of indictment beyond reasonable doubt, failure to charge as to. *Barnes*, 113/189, 38 S. E. 396.

Of explanation on intermediary in liquor sale. *McGovern*, 11 A. 267, 74 S. E. 1101.

By-law, parol proof as to, not admitted. *Dawson Paper Shell Pecan Co.*, 19 A. 42, 90 S. E. 984.

"Catching" fish, not shown by proof of "fishing." *Knight*, 15 A. 474, 83 S. E. 797.

Certainty, moral and reasonable, not mathematical, required for conviction. *Jackson*, 118/782, 45 S. E. 604.

Of guilt (of rape), moral and reasonable, not mathematical, required. *Wheeler*, 148/508, 97 S. E. 408.

What required to authorize conviction; proper charge as to. *Field*, 126/574, 55 S. E. 502.

Character for peaceableness, or for violence, how proved. *Powell*, 101/9, 29 S. E. 309, 65 Am. St. R. 277.

Peaceableness of defendant while in prison, when not material. *Smalls*, 102/31, 29 S. E. 153.

For peaceableness; admissibility of testimony on cross-examination. *Rucker*, 135/391, 69 S. E. 541.

Admissibility of testimony as to. *Hightower*, 14 A. 247, 80 S. E. 684.

Bad, of witness, questions on cross-examination for purpose of showing; what not allowable. *Allred*, 126/537, 55 S. E. 178.

For violence, not shown by specific battery. *Andrews*, 118/1, 43 S. E. 852.

For violence, of deceased, not shown by specific acts. *Warrick*, 125/133, 53 S. E. 1027.

For chastity, of woman, in seduction case; testimony as to good conduct admissible in rebuttal, to sustain character, where attacked. *Champion*, 21 A. 656, 94 S. E. 828.

For violence or peaceableness not in issue, no error in excluding questions. *Hawkins*, 141/212, 213, 80 S. E. 711.

General, when particular instances or special traits not admissible on issue of. *Arnold*, 131/494, 62 S. E. 806.

Good character of alleged participant in adultery, relevant on trial of the other party. *Glover*, 15 A. 44, 82 S. E. 602.

Of deceased; admissibility of evidence on trial for homicide. *Vernon*, 146/709, 92 S. E. 76.

Conviction of other offense, as affecting character; conviction not shown without production of record. *Phillips*, 18 A. 109, 88 S. E. 905.

Of accused; cross-examination as to specific acts, and reputation for committing offenses of the kind charged, allowed, where general good character is

shown on direct examination. **Moulder**, 9 A. 438, 71 S. E. 682.

Drunkenness not germane to question as to peaceableness. **Dunn**, 16 A. 9, 84 S. E. 488. Proper instruction to jury as to. **Booker**, 16 A. 286, 85 S. E. 255.

Effect of evidence as to. **Ware**, 18 A. 107, 89 S. E. 155.

Effect of evidence as to; and when no error in not charging jury on. **Mills**, 17 A. 116, 86 S. E. 280; **Hagood**, 5 A. 91, 62 S. E. 641; **Webb**, 6 A. 353, 354, 64 S. E. 1001. Error in charge as to. **Strickland**, 6 A. 538, 65 S. E. 300.

Error in admitting testimony as to; whether cured by withdrawing the testimony. **Hesters**, 17 A. 412, 87 S. E. 148.

Good, of accused, instruction as to when jury may convict regardless of; rule as to consideration to be given it. **Thornton**, 107/683, 33 S. E. 673.

Good, of accused, proper charge as to. **Nelms**, 123/576, 577, 51 S. E. 588.

Not put in issue by proving good conduct on one occasion. **Kennedy**, 101/559, 28 S. E. 979.

Of accused, a substantive fact to be considered (if in issue); not a substantive defense. **Scott**, 137/337, 73 S. E. 575.

Of accused, comment on, in argument, where not directly put in issue. **Rhodes**, 144/837, 88 S. E. 196.

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Of accused, not for consideration, unless put in issue. **Smoot**, 146/77, 90 S. E. 715.

Error in charging in effect that it is only in connection with other evidence that such evidence may, by creation of reasonable doubt, produce an acquittal. **Taylor**, 13 A. 715, 79 S. E. 924.

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Of accused for violence, when not admissible. **Nix**, 120/162, 47 S. E. 516; **Owens**, 120/210, 47 S. E. 545.

Of accused good, effect of evidence as to; proper charge to jury. **Brundage**, 7 A. 727, 67 S. E. 1051. Failure to charge jury on, without request, not error. **McLendon**, 7 A. 687, 67 S. E. 846.

Of accused (good) may be considered in reconciling conflicts in evidence. **Maddox**, 118/69, 44 S. E. 822.

Good, may generate reasonable doubt; but will not prevent conviction if guilt plainly established. **Henderson**, 120/507, 48 S. E. 167. Certificate of, in honorable discharge from U. S. army, admissible. **Taylor**, 120/858, 48 S. E. 361.

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Of accused, how considered by jury. **Keys**, 112/392, 37 S. E. 762, 81 Am. St. R. 63; **Howell**, 124/700, 52 S. E. 649. Error in charge to jury. **Culver**, 124/822, 53 S. E. 316. Material on question of intent. *Ib.* 824.

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Instruction to jury as to, considered. **Middlebrooks**, 21 A. 79, 94 S. E. 80.

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Of accused, a substantive defense, and may raise reasonable doubt. *Seymour*, 102/805, 30 S. E. 263.

New trial required by error in charge of court on effect of evidence as to defendant's good character, there being no such evidence. *Cooper*, 12 A. 561, 77 S. E. 878.

No error in charge to jury as to effect of evidence of good character. *Grusin*, 10 A. 153, 75 S. E. 350; *Williamson*, 18 A. 753, 90 S. E. 485.

Of accused not in issue, though facts indicate her immoral life. *Green*, 124/344, 52 S. E. 431. Evidence of good character of accused, offered after verdict, no cause for new trial. *Washington*, 124/424, 52 S. E. 910.

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Not shown by testimony that the witness had "not heard anything against" another, whom he had known only a month. *Joyner*, 12 A. 217, 77 S. E. 9. Evidence not warranting instruction as to. *Ib.*

Of accused, not to be considered unless he puts it in issue, new trial for. *Butler*, 142/287, 82 S. E. 654.

Proper charge to jury as to effect of evidence of good character. *Smith*, 13 A. 668, 79 S. E. 764; *Fordham*, 125/791, 54 S. E. 694; *Brazil*, 117/32, 37, 43 S. E. 460; *Mosley*, 11 A. 303, 75 S. E. 144; *McCullough*, 11 A. 612, 76 S. E. 393; *Johnson*, 21 A. 497, 94 S. E. 630.

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proper instruction to jury as to effect of evidence as to good character; no error in not charging that such evidence alone might be sufficient to generate reasonable doubt (ruling in *Taylor* case, 13 Ga. App. 715, over-

ruled). *Hill*, 18 A. 259, 89 S. E. 351; *Maddox*, 9 A. 448, 71 S. E. 498.

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Of accused put in issue; admissibility of testimony on cross-examination. *Dotson*, 136/243, 71 S. E. 164.

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Of accused put in issue by himself, State entitled to introduce evidence of bad character. *Strickland*, 12 A. 640, 77 S. E. 1070.

Of accused put in issue, testimony of specific instances of his misconduct heard on cross-examination. *Baldwin*, 138/349, 75 S. E. 324.

Refusal to charge jury as to, not error, where not attacked or put in issue. *Mixon*, 123/582, 51 S. E. 580, 107 Am. St. R. 149.

Of accused, relevant testimony incidentally involving, not excluded. *Smith*, 148/467, 96 S. E. 1042.

Of accused, witnesses called to prove, could be asked how long they had known him and had lived in the same community, etc. *Peeples*, 103/629, 29 S. E. 691.

Of deceased, admissibility of testimony as to, in homicide case. *Mixon*, 7 A. 808, 68 S. E. 315; *Chewning*, 18 A. 11, 88 S. E. 904; *Powell*, 101/9, 29 S. E. 309, 65 Am. St. R. 277; *Daniel*, 103/203, 29 S. E. 767.

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Of deceased, for violence, and of defendant for peaceableness; no error in charge of court as to. *Spurgeon*, 8 A. 117, 68 S. E. 653. Not to be shown by specific acts, or conviction of crime of violence; but shown by general reputation. *Alexander*, 8 A. 531, 69 S. E. 917.

Of deceased for violence can not be established, by specific acts. **Thorn-ton**, 107/683, 33 S. E. 673. Evidence confined to reputation; specific acts excluded. Conduct may be matter for cross-examination. Matters developed on cross-examination did not authorize proof of specific acts. **Fountain**, 23 A. 113, 98 S. E. 178.

Of deceased, proof of, to attack his dying declaration. **Perry**, 102/365, 30 S. E. 903.

Of deceased, question to witness as to, not in proper form. **Bush**, 109/122, 34 S. E. 298.

Of decedent for peaceableness, irrelevant where not put in issue by defendant. **Worley**, 138/336, 75 S. E. 240.

Of decedent in issue, testimony admissible. **Crawley**, 137/777, 74 S. E. 537.

Of decedent, violence of, when no lawful excuse for slaying him. **Crawley**, 137/777, 74 S. E. 537.

Of deceased was not put in issue by evidence or prisoner's statement, so as to authorize proof of good character. **McDonald**, 23 A. 59, 97 S. E. 448.

Of defendant, as to lewdness; when admissible. **Flannagan**, 22 A. 620, 97 S. E. 82.

Of parties may be put in issue. When admissible. **Andrews**, 118/1, 43 S. E. 852.

Of slain man for violence, not proper matter for proof on his slayer's trial, in absence of evidence that defendant knew of it; no foundation for such proof could be laid in defendant's statement of at the trial. **Wiggins**, 16 A. 477, 85 S. E. 674.

Of slain man for violence, referred to only in defendant's statement of accused, omission to charge jury as to, without request, no cause for new trial. **Crews**, 17 A. 465, 87 S. E. 604.

Of slain person, for violence, as defense. **Tillman**, 136/59, 70 S. E. 876; **Barnett**, 136/65, 70 S. E. 868.

Of slain person for violence, judge not required to charge as to, without request. **Moon**, 22 A. 617, 97 S. E. 81.

Unchaste, of woman, on account of whom homicide was committed, admissibility of proof as to. **Rumsey**, 126/420, 55 S. E. 167.

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Case of conviction dependent on, not presented, where there was direct proof of the act charged, and only the intent and degree of criminality to be inferred. **Reddick**, 11 A. 150, 74 S. E. 901; **Love**, 9 A. 874, 72 S. E. 433; **Thompson**, 20 A. 177, 92 S. E. 959.

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264; **Williamson**, 22 A. 787, 97 S. E. 195; **Ponder**, 18 A. 703, 90 S. E. 365; **Lockett**, 20 A. 180, 92 S. E. 948; **Conley**, 21 A. 135, 94 S. E. 261; **Garrett**, 21 A. 801, 95 S. E. 301; **Young**, 12 A. 86, 76 S. E. 753; **Barron**, 12 A. 343, 77 S. E. 214; **Brooks**, 12 A. 694, 78 S. E. 143.

Charge of court must give law of. where conviction is wholly dependent on such evidence. **Kinard**, 19 A. 624, 91 S. E. 941; **Autrey**, 18 A. 13, 88 S. E. 715; **Coney**, 18 A. 112, 88 S. E. 918; **Gantz**, 18 A. 154, 88 S. E. 993; **Harris**, 18 A. 710, 90 S. E. 370; **Kelley**, 20 A. 821, 93 S. E. 497; **Martin**, 17 A. 516, 87 S. E. 715; **Butler**, 17 A. 769, 88 S. E. 593.

Charge on law as to, not required, in view of prima facie presumption against accused, under facts here. **Carter**, 21 A. 493, 94 S. E. 630.

Charge on, not required here. **Harrell**, 22 A. 104, 95 S. E. 537.

Charge that the jury would be authorized to find the accused guilty, unless there was some other hypothesis as reasonable as that he committed the act, error. **Campbell**, 123/534, 51 S. E. 644.

Confession is direct evidence. **Bloodworth**, 22 A. 182, 95 S. E. 532.

Law as to, not applicable without qualification, where a positive confession of guilt is proved. **Griner**, 121/614, 49 S. E. 700; **Perry**, 110/234, 36 S. E. 781; **Sutton**, 17 A. 713, 88 S. E. 587.

Omission to charge on, not ground for new trial, where there was evidence of a confession. **Horton**, 21 A. 120, 121, 93 S. E. 1012; **Thomas**, 18 A. 101, 88 S. E. 917.

Consistent with innocence, no basis of conviction. **Henderson**, 147/134, 92 S. E. 871; **Bailey**, 104/530, 30 S. E. 817.

Not inconsistent with reasonable hypothesis of innocence, insufficient to uphold conviction. **Smith**, 16 A. 291, 85 S. E. 281; **Benjamin**, 16 A. 377, 85 S. E. 349; **Barker**, 4 A. 273, 61 S. E. 133; **Laster**, 4 A. 804, 62 S. E. 508;

Hanjaras, 6 A. 575, 65 S. E. 356; (arson) **Sevier**, 17 A. 277, 86 S. E. 533; **Hurt**, 18 A. 110, 88 S. E. 901; (larceny) **Grow**, 5 A. 73, 62 S. E. 669; **Wright**, 5 A. 177, 62 S. E. 712; **Wilson**, 5 A. 228, 62 S. E. 1003; **Jamison**, 5 A. 305, 63 S. E. 25; (adultery) **Long**, 5 A. 176, 62 S. E. 711; (gaming) **Cox**, 7 A. 22, 65 S. E. 1062; (assault to rape) **Gaines**, 7 A. 397, 66 S. E. 1099; (larceny) **Lindsey**, 15 A. 13, 82 S. E. 378; (homicide) **Cranford**, 15 A. 15, 82 S. E. 356; (adultery) **Glover**, 15 A. 44, 82 S. E. 602; (burglary) **Aiken**, 17 A. 721, 88 S. E. 210; (burglary) **Davis**, 17 A. 820, 88 S. E. 706; (adultery) **Phillips**, 17 A. 824, 88 S. E. 716.

Conspiracy shown by circumstantial evidence. **Cook**, 22 A. 771, 97 S. E. 264.

Conviction on. **Addis**, 120/180, 47 S. E. 505; **Morgan**, 120/294, 48 S. E. 9. Conspiracy shown by. **Owens**, 120/296, 48 S. E. 21.

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Convictions of murder on, warranted. **Knight**, 148/40, 95 S. E. 679; **Warren**, 149/405, 96 S. E. 867; **Jackson**, 148/519, 96 S. E. 1001; **Groce**, 148/520, 97 S. E. 525.

Corpus delicti may be proved by. **Miles**, 129/589, 59 S. E. 274.

Court should charge jury on, where conviction depends partly on. **Allen**, 14 A. 116, 80 S. E. 215.

Definition of, need not be given in charge, where not requested. **Hamilton**, 18 A. 295, 89 S. E. 449.

Doctrine of reasonable doubt not limited by charge as to. **Phinazee**, 22 A. 260, 95 S. E. 878.

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Facts requiring charge on. **Harden**, 13 A. 34, 78 S. E. 681. Evidence not requiring charge as to. **Banks**, 13 A. 182, 78 S. E. 1014.

Evidence requiring charge to jury as to duty to acquit if the proved facts are consistent with innocence. **Allen**,

13 A. 657, 79 S. E. 769; **Kincaid**, 13 A. 684, 79 S. E. 770.

Facts not requiring charge to jury on. **Benton**, 9 A. 422, 71 S. E. 498; **Jordan**, 9 A. 578, 71 S. E. 875; **Jackson**, 21 A. 123, 94 S. E. 75; **Curry**, 13 A. 659, 79 S. E. 771; **Teal**, 17 A. 556, 87 S. E. 830; **Harper**, 12 A. 651, 77 S. E. 915.

Evidence authorizing charge on both direct and circumstantial evidence. **Phillips**, 12 A. 563, 77 S. E. 832.

Proper charge as to. **Flannigan**, 13 A. 663, 79 S. E. 645.

Failure to charge as to. **Jones**, 105 A. 649, 31 S. E. 574; **Toler**, 107/682, 33 S. E. 629; **McElroy**, 125/37, 53 S. E. 750; **Smith**, 125/296, 54 S. E. 127.

Failure to charge on, not cause for new trial, where the evidence demanded the verdict. **Cook**, 22 A. 771, 97 S. E. 264.

Flight, as circumstance tending to show guilt. **Glover**, 15 A. 45, 53, 82 S. E. 602; **Smith**, 16 A. 293, 294, 85 S. E. 281; **Benjamin**, 16 A. 376, 85 S. E. 342; **Turner**, 114/425, 40 S. E. 308.

Flight, proper charge as to. **Thomas**, 129/419, 59 S. E. 246.

Hypotheses arising from. **Bush**, 23 A. 126, 97 S. E. 554.

Not upholding conviction of larceny. **Stiles**, 113/700, 39 S. E. 295. Not uphold conviction of murder. **Williams**, 113/721, 39 S. E. 487; **Shigg**, 115/212, 41 S. E. 694; **Young**, 121/334, 49 S. E. 256. Sufficient here to warrant conviction of larceny. **Buckine**, 121/337, 49 S. E. 257.

Insufficient to warrant conviction of arson. **Green**, 111/139, 36 S. E. 609; **Gaither**, 119/118, 45 S. E. 973. Sufficient here to warrant conviction of burglary. **Jordan**, 119/443, 46 S. E. 679.

In murder. **Jones**, 130/274, 60 S. E. 840; **Moore**, 130/322, 335, 60 S. E. 544; **Brown**, 130/623, 61 S. E. 477.

Instruction that if no confession was made, the law of circumstantial evidence, as given, was applicable, not error. **Mitchell**, 18 A. 501, 89 S. E. 602. Confession is direct evidence. *Id.*

Language to charge to jury, "Can all these things be true and yet can we reasonably say he is innocent?" not erroneous for reason assigned. **Douglas**, 14 A. 14, 79 S. E. 1134.

Law of, not to be charged, where all the testimony is direct. **Bivins**, 5 A. 434, 63 S. E. 523; **Bailey**, 8 A. 33, 68 S. E. 457. Court should instruct jury as to, though not requested, where conviction is dependent on such evidence. **Thomas**, 8 A. 96, 68 S. E. 522; **Harvey**, 8 A. 660, 70 S. E. 141.

Must exclude every reasonable hypothesis but that of guilt. **Jennings**, 13 A. 680, 79 S. E. 756.

Necessary instruction to jury on. **Holt**, 5 A. 184, 62 S. E. 992; **Bivins**, 5 A. 434, 63 S. E. 523; **Lewis**, 6 A. 205, 64 S. E. 701.

No error in charge as to. **Brooks**, 19 A. 3, 7, 90 S. E. 989.

Not excluding every other reasonable hypothesis than that of guilt, not sufficient to convict. (Larceny) **Harris**, 19 A. 741, 92 S. E. 225.

Not sufficient here. (Arson) **West**, 6 A. 105, 64 S. E. 130; **Burley**, 6 A. 776, 65 S. E. 816; (larceny) **Mungin**, 6 A. 108, 64 S. E. 281; (burglary) **Hampton**, 6 A. 778, 65 S. E. 816.

Of conspiracy and of murder. **Weaver**, 135/317, 69 S. E. 488.

Of forgery. **Walker**, 127/48, 56 S. E. 113, 8 L. R. A. (N. S.) 1175, 119 Am. St. R. 314.

Of guilt, relevancy of. **McConnell**, 2 A. 446, 58 S. E. 546. When not sufficient to connect accused. **Ragland**, 2 A. 492, 58 S. E. 689; **Murray**, 2 A. 620, 58 S. E. 1060; **Carlisle**, 2 A. 651, 58 S. E. 1068.

Of guilt unexplained, sufficiency of, to satisfy juror. **Smith**, 148/332, 96 S. E. 632.

Of homicide; strength required for conviction. **Scroggs**, 147/737, 95 S. E. 226.

Of marriage. **Oliver**, 7 A. 697, 67 S. E. 886.

Of venue, when insufficient. **Wilson**, 6 A. 16, 64 S. E. 112. When sufficient. **Dyer**, 6 A. 390, 65 S. E. 42.

Omission to charge jury as to degree of proof necessary where the evidence is circumstantial, error. **Davis**, 7 A. 33 66 S. E. 960. Circumstantial evidence of poisoning. **Gary**, 7 A. 505, 67 S. E. 207.

Omission to charge jury on, without request, not require new trial, where the accused admitted the act charged, and the reason given by him did not justify or excuse him. **Cooner**, 16 A. 540, 85 S. E. 688.

Presence of intoxicating liquor on premises; inference of knowledge. **Reynolds**, 23 A. 369, dissent, 370, 98 S. E. 246.

Proof of sexual intercourse by. **Johnson**, 119/447, 46 S. E. 634.

Proof that soon after the crime the defendant was seen with one connected by evidence with it, admitted when. **Thompson**, 4 A. 649, 62 S. E. 99.

Proper charge to jury as to. **McDonald**, 21 A. 125, 94 S. E. 262.

Province of jury invaded by instruction that a certain fact would be a circumstance tending to prove lack of fraudulent intent. **Hamilton**, 18 A. 295, 89 S. E. 449.

Raising a suspicion, no basis for conviction. **New**, 124/143, 52 S. E. 160. To prove corpus delicti, and connection of accused with murder, when sufficient. **Campbell**, 124/432, 52 S. E. 914.

Recent possession of stolen goods. **Gravitt**, 114/841, 40 S. E. 1003, 88 Am. St. R. 63.

Refusal to charge as to. **Rosenthal**, 126/558, 55 S. E. 497.

Relied on for conviction. **Lanier**, 141/17, 80 S. E. 5; **Frank**, 141/243, 80 S. E. 1016.

Rule as to degree of certainty required should be charged without request. **Richards**, 102/569, 27 S. E. 726.

Rule as to strength of when introduced by State, not applied when introduced by defense. **Sikes**, 120/494, 48 S. E. 153. Sufficient to identify stolen bale as the one alleged. **Johnson**, 120/509, 48 S. E. 199.

Rule that it must exclude every reasonable hypothesis other than that of guilt, discussed. **Cage**, 11 A. 319, 320, 75 S. E. 160.

Scarf-pin found near scene of crime, irrelevant, no proof connecting it with accused. **Field**, 126/573, 55 S. E. 502.

Sufficiency of, for conviction. **Sheffield**, 1 A. 135, 57 S. E. 969; **Amorous**, 1 A. 313, 57 S. E. 999; **Riley**, 1 A. 651, 57 S. E. 1031; **Brown**, 141/5, 80 S. E. 320; **Carter**, 141/308, 80 S. E. 995; **Watson**, 118/66, 44 S. E. 803; **Bines**, 118/320, 45 S. E. 376, 68 L. R. A. 33; **Murphy**, 118/780, 45 S. E. 609; **Jackson**, 118/780, 45 S. E. 604; **Patton**, 117/230, 43 S. E. 533; **Jones**, 117/710, 712, 44 S. E. 877; (murder) **Laws**, 114/10, 39 S. E. 883; **Robinson**, 114/56, 39 S. E. 862; **Cook**, 114/523, 40 S. E. 703; (burglary) **Glover**, 114/828, 40 S. E. 998. Sufficiency of charge thereon. **Robinson**, 114/56, 39 S. E. 862.

Sufficient to establish venue. **McCoy**, 123/145, 51 S. E. 279. Corpus delicti. **Ray**, 4 A. 70, 60 S. E. 816; **Hutchings**, 4 A. 453, 61 S. E. 837; **Moore**, 14 A. 256, 80 S. E. 507; (murder) **White**, 125/256, 54 S. E. 188; (poisoning by carbolic acid) **Green**, 125/742, 54 S. E. 724.

Sufficient here to corroborate accomplice of one tried for arson. **Harrell**, 121/607, 49 S. E. 703. Charge as to, on trial for receiving stolen goods. **Blumenthal**, 121/477, 49 S. E. 597.

Sufficiency of, to exclude hypothesis other than that of guilt. **Smith**, 146/76, 90 S. E. 713. Insufficient. **Smith**, 146/107, 90 S. E. 707.

Sufficiency of. Jury authorized to conclude that gun was loaded with ball. **Coney**, 101/582, 28 S. E. 918. But not that accused carried away the corn he was seen taking. **Hicks**, 101/581, 28 S. E. 917.

Sufficiency of, error in charging as to. **Coleman**, 5 A. 768-9, 64 S. E. 828.

To convict on, the proved facts must exclude every "reasonable hypothesis" save that of guilt; error in refusal to charge that the "proven facts must not

only be consistent with the hypothesis of guilt, but inconsistent with the hypothesis of innocence." *Thompson*, 20 A. 177, 92 S. E. 959.

Must be consistent with guilt and exclude other hypothesis. *Harwell*, 2 A. 619, 58 S. E. 1111; *Cooper*, 2 A. 730, 59 S. E. 20.

Venue shown by. *Linder*, 17 A. 520, 87 S. E. 703.

When court is required to charge as to *Pope*, 21 A. 251, 254, 94 S. E. 311.

When court should charge as to, without request. *White*, 4 A. 72, 60 S. E. 803.

When insufficient to show fornication. *Lightner*, 126/563, 55 S. E. 471.

When sufficient to charge jury as to particular hypothesis arising from, instead of giving general rule. *Mangum*, 5 A. 445, 63 S. E. 543.

Against accused; his statement of previous intention to effect escape. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33.

Of guilt, finding bottles of whisky in house of accused on day next after that on which he is alleged to have sold liquor. *Cole*, 120/485, 48 S. E. 156. In arson. *Morgan*, 120/499, 504, 48 S. E. 238.

Specification of circumstances from which guilt may be inferred, by judge in charging jury, when not error. *Blumenthal*, 121/477, 49 S. E. 597.

Corroborating circumstances consistent with innocence, insufficient to sustain testimony of accomplice, here. *Smith*, 5 A. 833, 63 S. E. 917.

Requirements met. *Jenkins*, 2 A. 684, 58 S. E. 1115; *Glaze*, 2 A. 704, 58 S. E. 1126; *Lett*, 2 A. 829, 59 S. E. 85.

Claim of right to do act for which indicted, when inadmissible as testimony. *Fraser*, 112/13, 37 S. E. 114.

Clothing of person killed, sent out with jury, in homicide case; no ground for new trial, when. *Weldon*, 21 A. 330, 94 S. E. 326.

Worn be deceased, admissibility of, on trial for homicide by shooting. *Goodwin*, 148/33, 95 S. E. 674.

Coercion to obtain evidence. *Brown*, 15 A. 484, 83 S. E. 890.

Commitment trial, writing by magistrate purporting to contain testimony on, but prepared after trial from memory, admissibility of. *Haines*, 109/528, 35 S. E. 141.

Presumed that defendant's statement at trial was reduced to writing, as the law required it to be; parol proof of such statement not admissible. *McDuffie*, 17 A. 343, 86 S. E. 821.

Entry by magistrate, on warrant, admissibility of, as original evidence. *McCalman*, 121/495, 49 S. E. 609.

Complaint of woman assaulted, admissibility of. *Jackson*, 20 A. 721, 93 S. E. 230.

Of pain, made by accused after encounter, when admissible in evidence. *Powell*, 101/9, 29 S. E. 309, 65 Am. St. R. 277.

Compulsory evidence against self. *Aiken*, 16 A. 848, 86 S. E. 1076; *Brown*, 15 A. 484, 83 S. E. 890; *Underwood*, 13 A. 206, 214, 78 S. E. 1103.

Rejected as an involuntary admission. *Calhoun*, 144/679, 87 S. E. 893.

Concealed article found by illegal search, admissible. *Hornbuckle*, 18 A. 17, 88 S. E. 748; *Brown*, 18 A. 288, 89 S. E. 342; *Pruett*, 18 A. 313, 89 S. E. 378; *Gillespie*, 18 A. 612, 89 S. E. 1088; *Brooks*, 19 A. 9, 90 S. E. 989.

Condition and conduct of accused, evidence illustrating, when admissible. *Coleman*, 3 A. 299, 59 S. E. 829.

Conduct and declarations of accused, admissibility of testimony as to. *Crumbly*, 141/17, 80 S. E. 281; *Frank*, 141/243, 80 S. E. 1016.

And presence of accused, admissibility of testimony explaining. *Hall*, 141/7, 80 S. E. 307; *Frank*, 141/243, 80 S. E. 1016.

Evidence insufficient to put accused on explanation of. *Ward*, 102/532, 28 S. E. 982.

At previous times, as bearing on issue whether defense was an afterthought. *Maxwell*, 146/10, 90 S. E. 279.

Which was not connected with offense charged, and was calculated to

excite prejudice against him, evidence as to, improperly admitted, required reversal. *Lowman*, 109/501, 34 S. E. 1019.

Reasonably indicating consciousness of guilt, relevant evidence. *White*, 127/273, 56 S. E. 425; *Ryals*, 23 A. 86, 97 S. E. 444.

Confessions. Accessory before fact, confession made by one convicted as, when no ground for extraordinary motion for new trial. *Rawlins*, 126/96, 54 S. E. 924. Confessions of principal, when admissible on trial of accessory before the fact. *Brooks*, 103/50, 29 S. E. 485; *Gullatt*, 14 A. 53, 80 S. E. 340.

Act or declaration of accused which does not count for confession or criminating statement. *Goolsby*, 133/427, 66 S. E. 159.

Admissibility of. *Shiners*, 17 A. 334, 86 S. E. 734; *Curry*, 17 A. 378, 87 S. E. 685; *Swain*, 135/219, 69 S. E. 170; *Brown*, 105/643, 31 S. E. 557. As against coconspirator. *Baker*, 17 A. 279, 86 S. E. 530.

Admissibility of confession obtained by officer making statement to accused to the effect that it would be better for him to tell the truth; former decisions discussed. *Wilson*, 19 A. 760, 764, 92 S. E. 309.

Admissibility of, over objection that accused had been caught by posse and dogs, and was in custody. *Smith*, 139/230, 76 S. E. 1016.

Admission incriminatory, not confession of guilt; circumstantial evidence only. *Kinard*, 19 A. 624, 91 S. E. 941. Confessions and incriminating admissions by accused; sufficient foundation for receiving evidence. *Lucas*, 146/315, 91 S. E. 72.

Admission not warranting charge to jury on confession. *Hutchinson*, 5 A. 598, 63 S. E. 597; *Simmons*, 116/583, 42 S. E. 779. Incriminating admission no basis for such charge. *Davis*, 114/109, 39 S. E. 906. Admission of minor or subordinate fact, without admitting main fact, is not. *Cleveland*, 114/110, 39 S. E. 941. Confession of V. II—9.

crime not made by admission coupled with statement of facts justifying the act admitted; conviction based solely thereon, set aside. *Wall*, 5 A. 308, 63 S. E. 27; *Hart*, 14 A. 714, 82 S. E. 164; *Curry*, 148/564, 97 S. E. 529.

Admission amounting to confession of guilt. *Cooner*, 16 A. 540, 85 S. E. 688. Omission to charge jury that admissions should be scanned with care, and confessions received with great caution, not reversible error, in absence of request. *Ib.* 540.

Admissions of coconspirator, admissibility of. *Gunter*, 19 A. 772, 775, 92 S. E. 314.

Admissions and confessions, difference between. Effect of silence, etc. *Wright*, 136/130, 70 S. E. 1102; *Newman*, 144/494, 87 S. E. 398.

Alone, no basis of conviction. May be corroborated by aliunde proof of corpus delicti. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33; *Sanders*, 118/329, 45 S. E. 365. Conviction on, not favored. *Graham*, 118/807, 45 S. E. 616.

Alone, not establish corpus delicti. *Williams*, 125/741, 54 S. E. 661. What sufficient corroboration of. *Smith*, 125/298, 54 S. E. 127. As principal in second degree. *Lowe*, 125/55, 53 S. E. 1038. Inadmissible because presumably induced by hope of benefit. *Smith*, 125/252, 54 S. E. 190.

Made at different times, admissible. *Lowe*, 125/55, 53 S. E. 1038. Transcript of stenographic report of, admissible, when. *Ib.*

Another, confession of, exonerating defendant, after conviction; no ground for new trial. *Burrage*, 21 A. 508, 94 S. E. 644. Confession of another, not admissible in behalf of defendant. *Gallaher*, 22 A. 640, 97 S. E. 97. When not admissible against another. *Gray*, 13 A. 374, 79 S. E. 223.

Arrest, though accused under, when confession made, it is not inadmissible if voluntary. *Brown*, 3 A. 479, 60 S. E. 216. Confession not inadmissible merely because made pending an illegal arrest. *Ivey*, 4 A. 828, 62 S. E. 565.

Assault to rape, statement not amounting to confession of. *Huey*, 7 A. 406, 66 S. E. 1023.

Charge of court as to, considered. *Phinazee*, 22 A. 262, 95 S. E. 878.

Charge on, invoked by defendant; though not applicable, no ground for new trial. *Rawlins*, 124/57, 52 S. E. 1. Charge on law of, not necessary unless requested. *Patterson*, 124/408, 52 S. E. 534.

Charge on, not strictly appropriate, but not reversible error. *Springer*, 102/448, 30 S. E. 971.

Charge on, not warranted by evidence of incriminating admission. *Powell*, 101/10, 29 S. E. 309, 65 Am. St. R. 277; *Porter*, 11 A. 246, 74 S. E. 1099. Confession of accomplice. Incriminatory statement, not amounting to confession of guilt, not require charge to jury on law of confessions. *Bridges*, 9 A. 235, 70 S. E. 968.

Charge on, not authorized by proof of an admission which is not a confession of the crime. *Reed*, 15 A. 436, 83 S. E. 674.

Charge not authorized by evidence. *Rawlins*, 124/47, 52 S. E. 1. Proper charge to jury as to. *Duren*, 21 A. 524, 94 S. E. 902; *Wilson*, 19 A. 760, 764, 92 S. E. 309; *Gunter*, 19 A. 775, 92 S. E. 314; *Cooper*, 12 A. 561, 77 S. E. 878. Failure to charge jury to determine whether a confession had been made, not cause for new trial, in absence of request to charge. *Cooper*, 12 A. 561, 77 S. E. 878.

Charge on, failure to, in absence of request, not cause new trial. *Clark*, 117/254, 43 S. E. 853; *McArthur*, 19 A. 747, 92 S. E. 234; *Baker*, 14 A. 582, 81 S. E. 805. Failure to instruct jury as to confession of accomplice, in absence of request, not cause for new trial, though evidence authorized instruction. *Cook*, 9 A. 208, 70 S. E. 1019.

Charge not required in absence of evidence that accused confessed. *Cox*, 13 A. 688, 79 S. E. 909.

Charge as to weight of, not required, without request. *Sutton*, 17 A. 714, 88

S. E. 122, 587; *McDuffie*, 17 A. 344, 86 S. E. 821.

Charge that "confessions of guilt should be received with caution," not required, without request, when. *Simmons*, 18 A. 104, 88 S. E. 904.

Charge assuming that accused made confession, error, when. *Dixon*, 113/1039, 39 S. E. 846. Confession of accomplice. No error in charging law as to, the evidence being in conflict as to whether the accused had made a confession. *McWhorter*, 9 A. 437, 71 S. E. 589.

Charge that they should be received with caution, omitting "great," held no cause for new trial. *Cochran*, 113/740, 39 S. E. 337.

Charge on law of, insufficient. *Lucas*, 110/758-9, 36 S. E. 87.

Common law and decisions to be considered in interpretation of code section as to. *Wilson*, 19 A. 766, 767, 92 S. E. 309.

Competent, immaterial that jury heard preliminary examination. *Griner*, 121/614, 49 S. E. 700.

Conviction based on, not favored. *Jones*, 2 A. 433, 58 S. E. 559.

Corpus delicti proved by circumstantial evidence coupled with incriminatory admission. *Garnett*, 10 A. 109, 72 S. E. 951; *Stanley*, 10 A. 153, 72 S. E. 954. Not alone proof of corpus delicti. *Childs*, 10 A. 829, 74 S. E. 89. Confession without aliunde proof of corpus delicti is not sufficient to convict. *Allen*, 4 A. 458, 61 S. E. 840; *Boyd*, 4 A. 58, 60 S. E. 801. Confession of accomplice. Corpus delicti shown only by incriminatory statements of accused; conviction set aside (of sale of mortgaged property). *Butler*, 9 A. 878, 72 S. E. 445. Confession of accomplice. Incriminatory statement not amounting to confession, sufficient, in connection with suspicious circumstances, to show corpus delicti. *Twilley*, 9 A. 435, 71 S. E. 587.

Corroborated by proof of corpus delicti and other evidence. *Hugle*, 147/35, 92 S. E. 646.

Corroborated, as basis of conviction. *Cargile*, 136/55, 70 S. E. 873; *Dotson*, 136/244, 71 S. E. 164.

Corroborated only by proof of corpus delicti, conviction upon. *Brown*, 141/5, 80 S. E. 320; *Chancey*, 141/54, 80 S. E. 287; *Hart*, 141/672, 81 S. E. 1108; *Snow*, 14 A. 489, 81 S. E. 363.

Corroboration by proof of corpus delicti. *Thomas*, 18 A. 101, 88 S. E. 917; *Simmons*, 18 A. 104, 88 S. E. 904; *Allen*, 8 A. 90, 68 S. E. 558; *Sutton*, 17 A. 714, 88 S. E. 122, 587; *Sneed*, 16 A. 351, 85 S. E. 354; *Morgan*, 120/499, 48 S. E. 238.

Corroboration of, by proof of corpus delicti. The two considered in connection. *Wilburn*, 141/510, 81 S. E. 444. Rule as to corroboration by circumstances. *Baker*, 14 A. 582, 81 S. E. 805.

Corroboration by circumstances proving corpus delicti; whether sufficient, a question for the jury. *Peterson*, 19 A. 144, 91 S. E. 223; *Sutton*, 17 A. 714, 88 S. E. 122, 587.

Corroboration necessary to convict. *Brazley*, 17 A. 205, 86 S. E. 425; *Wilson*, 6 A. 16, 64 S. E. 112; *West*, 6 A. 105, 64 S. E. 130; *Hines*, 5 A. 491, 63 S. E. 583; *Huey*, 7 A. 406, 66 S. E. 1023; *Rucker*, 2 A. 140, 58 S. E. 295. Not corroborated, not authorize conviction; corpus delicti must be proved aliunde. *Davenport*, 12 A. 104, 76 S. E. 756; *Sims*, 12 A. 551, 77 S. E. 891; *Cooper*, 12 A. 561, 77 S. E. 878; *Moon*, 12 A. 614, 77 S. E. 1088; *McAllister*, 2 A. 654, 58 S. E. 110; *Sims*, 14 A. 28, 79 S. E. 113.

Corroboration of, by circumstances, as to fornication. *Wooster*, 21 A. 287, 94 S. E. 279.

Corroboration of, instructions as to. *Wimberly*, 105/188, 31 S. E. 162; *Davis*, 105/809, 32 S. E. 158.

Corroboration of, proper to charge jury as to. *Griner*, 121/615, 49 S. E. 700.

Corroboration of, rule as to. *Cochran*, 113/726, 39 S. E. 332.

Corroboration of, sufficient here.

Brown, 105/645, 31 S. E. 557; *Douglas*, 6 A. 158, 64 S. E. 490.

Corroboration sufficient, as to burglary. *Simmons*, 18 A. 104, 88 S. E. 904.

Corroboration of. *Owens*, 119/304, 46 S. E. 433; *Joiner*, 119/315, 46 S. E. 412. Tracks not sufficient corroboration here. No corroboration of, as to larceny of cow. *Sneed*, 16 A. 351, 85 S. E. 354. Confession of accomplice, insufficient corroboration of. *Bishop*, 9 A. 205, 70 S. E. 976. What sufficient corroboration of confession, a jury question; sufficient as to hog-stealing here. *Cook*, 9 A. 70 S. E. 1019.

Corroboration of. *Harvey*, 8 A. 660, 70 S. E. 141. Not sufficient to convict without proof of all facts essential to show commission of offense charged. *Ib.*

Coupled with proposition to settle, when admissible. *Hecox*, 105/625, 31 S. E. 592.

Defined. *Reed*, 15 A. 436, 83 S. E. 674. Not made by admission coupled with justifying explanation. *Ib.* Admission of the act, coupled with legal excuse, no confession. Dissent; such admission is no less a confession because coupled with exculpatory statement. *Owens*, 120/296, 48 S. E. 21.

Direct evidence of guilt, confession is. *Thomas*, 18 A. 101, 88 S. E. 917; *Mitchell*, 18 A. 501, 89 S. E. 602; *Kinard*, 19 A. 624, 91 S. E. 941.

Direct evidence, confession being, conviction did not depend solely on circumstantial evidence. *Sutton*, 17 A. 713, 88 S. E. 122, 587. Law of circumstantial evidence not applicable, without qualification, where confession proved. *Griner*, 121/614, 49 S. E. 700.

Evidence authorized submitting issue. *Leverett*, 23 A. 141, 98 S. E. 115.

Expression of desire to plea guilty, confession by. *Abrams*, 121/170, 172, 48 S. E. 965.

Foundation for introducing confession. *Hawkins*, 8 A. 705, 70 S. E. 53.

Fright-producing circumstances, confession made in, without threat or inducement of favor; conviction based on,

set aside. *Allen*, 4 A. 458, 61 S. E. 840.

Homicide case, evidence showing confession of guilt in. *Lucas*, 146/328, 91 S. E. 72.

Homicide, confession of, when not excluded by reason of prior statement of sheriff to prisoner. *Waycaster*, 136/95, 100, 70 S. E. 883.

Hope not induced by another, confessions arising from, admissible. *Milner*, 124/89, 52 S. E. 302; *Hecox*, 105/625, 31 S. E. 592; *Jones*, 18 A. 310, 89 S. E. 347.

Hope or fear as inducement, or free and voluntary. *Morgan*, 120/499, 503, 48 S. E. 238.

Imprisoned negro surrounded by a crowd of white men, confession not excluded because made by, to his custodian, nor because of subsequent promises of protection etc. *Hilburn*, 121/345, 49 S. E. 318.

Incriminating admission of accused not to be treated as. *Thomas*, 143/268, 84 S. E. 587; *Powell*, 101/10, 29 S. E. 309, 65 Am. St. R. 277. Incriminating admissions may not amount to confessions of guilt. *Weaver*, 135/321, 69 S. E. 488; *Roberson*, 135/654, 70 S. E. 175. See *Mize*, 135/295, 69 S. E. 173.

Incriminating statement not inadmissible because it indicated that the accused had committed an additional and separate offense. *Watts*, 8 A. 694, 70 S. E. 46.

Inculpatory statement not treated as. If so considered, no error here in admitting. *Smarra*, 131/24, 61 S. E. 914.

Induced by advice of officer having accused in custody, to the effect that if accused knew anything she had better tell it, inadmissible. *Dixon*, 113/1039, 39 S. E. 846.

Induced by hope not generated outside of mind of accused, admissible. *Price*, 114/855, 40 S. E. 1015. Confession admitted in evidence without objection, and corroborated, no basis for conviction, where induced by hope or fear. *Allen*, 4 A. 458, 61 S. E. 840.

Induced by hope or fear held out by another, not to be considered though not made in his presence, and made to one ignorant of the inducement. *Griner*, 121/615, 49 S. E. 700.

Induced by promise, no basis for conviction. *DeVore*, 7 A. 197, 66 S. E. 484.

Inducement by promise not to hurt a hair of defendant's head if he would tell the truth, etc. *Garnett*, 10 A. 111, 72 S. E. 951.

Inducement not exclude incriminatory admission leading to discovery of confirmatory circumstances, when. *Garnett*, 10 A. 109, 72 S. E. 951.

Jury may believe part and reject part of. *Cook*, 114/523, 40 S. E. 703. Not concluded by judge's decision on preliminary examination; but must at last determine whether confession was freely and voluntarily made. *Price*, 114/856, 40 S. E. 1015.

Law of, not applicable under evidence of inculpatory admission. *Ransom*, 2 A. 826, 59 S. E. 101; *Suddeth*, 112/409, 37 S. E. 747.

Law does not encourage confessions. *Griffin*, 12 A. 622, 77 S. E. 1080.

Law of, not involved, though words used may have been construed as admission against ownership. *Lee*, 102/221, 29 S. E. 264.

Legal evidence, confessions are. Objection to them must be made when they are offered. *Alford*, 137/459, 73 S. E. 375.

Liquor, confession as to having, sufficiently corroborated. *Bradford*, 5 A. 494, 63 S. E. 530.

Material facts discovered by reason of, may be proved, if no unlawful violence was used to obtain the disclosure, though obtained through the influence of fear. *Johnson*, 119/257, 45 S. E. 960.

Murder, evidence of confession of. *Webb*, 140/779, 79 S. E. 1126; *Brannon*, 140/787, 80 S. E. 7. Confessor of murder, statements amounting to. *Jones*, 130/274, 60 S. E. 840.

Opinion that a confession had been proved, not intimidated by the words

"these confessions," at the conclusion of charge of court on law as to. *Esa*, 19 A. 14, 90 S. E. 732.

Ownership, confession of want of, not shown by statement of accused that he did not have the property. *Lee*, 120/194, 195, 47 S. E. 545.

Plea of guilty not admissible against codefendant. *Gray*, 13 A. 374, 79 S. E. 223.

Preliminary proof sufficient as to. *McWhorter*, 118/55, 44 S. E. 873.

Prima facie case for admission of, need not include testimony offered by accused. *Wilburn*, 141/510, 81 S. E. 444.

Proof of inculpatory admission does not show. *Riley*, 1 A. 651, 57 S. E. 1031. Charge on, not to be given, if no proof thereof. *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Refusal to allow defendant, on cross-examination of one who has testified to a confession, to obtain an answer as to something else said in connection with it, is not ground for new trial unless the judge was informed as to the expected answer, and unless such an answer would have been material and beneficial to defendant. *Ellison*, 21 A. 260, 94 S. E. 253.

Request to charge that "evidence of confession is the weakest and least to be relied on of any evidence known to be competent in law," properly refused. *Griner*, 121/614, 49 S. E. 700.

Silence upon incriminating statement made, when confession not implied from. *Jones*, 2 A. 433, 58 S. E. 559.

Statements amounting to confession. *Thompson*, 147/745, 95 S. E. 292.

Subsequent, whether made under influences still operating, a question of fact, not of law. *Elder*, 143/363, 85 S. E. 97; *Milner*, 124/86, 52 S. E. 302.

Sufficiency of corroboration of, for jury, not charge of court. *Coley*, 110/271, 34 S. E. 485.

Testimony as to admissions of accused in his statement on his trial, not subject to objection that the statement was not freely and voluntarily made. *Daren*, 21 A. 524, 94 S. E. 902.

Testimony that "everything was peaceable," and that the defendant

"seemed unafraid," when he confessed, disregarded as mere opinion contradicted by facts. *Allen*, 4 A. 459, 61 S. E. 840.

Time and place, when received in evidence, though not in terms stating. *Cook*, 124/653, 53 S. E. 104.

Unauthorized charge on, not cause for setting aside verdict demanded by evidence. *Belton*, 21 A. 792, 95 S. E. 299.

Unlawful procurement of, does not render confessor incompetent as witness on trial of his alleged associates in the criminal enterprise. *Rawlins*, 124/32, 52 S. E. 1. Not legally obtained, but leading to discovery of facts; admissibility. *Underwood*, 13 A. 212, 78 S. E. 1103. Voluntary, accused being under arrest, handcuffed, at night and in woods, not excluded. *Wilburn*, 141/510, 81 S. E. 444. Confession, to be admissible as evidence, must be voluntary and not induced by any hope of benefit or fear of injury. *Mill*, 3 A. 414, 60 S. E. 4. Confession or incriminating admission, statement of accused not admitted as, where not voluntary, etc. *Johnson*, 1 A. 129, 57 S. E. 934. Confession not voluntary; surroundings of accused may be more ominous and more potential than mere threats, in inducing. *Moon*, 12 A. 614, 77 S. E. 1088. Confession for purpose of showing innocence of another offense charged, made by one tied by captors who had just lynched others, treated as involuntary. *Allen*, 4 A. 458, 61 S. E. 840. Confession while under arrest, which witness testifies was voluntary, admitted without first requiring proof that it was not the result of threats or inducements by officer in charge of accused. *Jenkins*, 119/431, 46 S. E. 628; *Price*, 114/855. Whether free and voluntary, determined by jury. *Cantrell*, 141/98, 80 S. E. 649. Weight of. *White*, 141/526, 81 S. E. 440. When court should exclude, without submitting question to jury, as to whether voluntary. *Hawkins*, 6 A. 109, 64 S. E. 289. Inadmissible on account of whipping on former occasion, etc. *Ib*.

Weight of; charge thereon must be

specially requested. *Walker*, 118/34, 44 S. E. 850. Error to express opinion as to. *Calvin*, 118/73, 44 S. E. 848.

Written statement taken by solicitor-general and sheriff, admissible as confession. *Hiers*, 18 A. 704, 90 S. E. 361. Conflict in evidence and credibility of witness, settled by verdict. *Connally*, 112/196, 37 S. E. 379; *Isham*, 112/406, 37 S. E. 735.

Consciousness of guilt and feigning of innocence, testimony admissible on issue as to. *Frank*, 141/244, 80 S. E. 1016. Consent, evidence sufficient to show, notwithstanding refusal. *Smith*, 9 A. 230, 70 S. E. 969.

Of one forbidding act of his employee, shown by circumstances. *Groves*, 8 A. 690, 70 S. E. 93. Consistent with hypothesis of innocence, evidence no basis for conviction. *Johnson*, 1 A. 129, 57 S. E. 934.

Conspiracy, evidence of. *Carter*, 141/308, 80 S. E. 995.

Proof of, should precede proof of declaration of conspirator. *McDaniel*, 103/270, 30 S. E. 29.

Shown by circumstantial as well as direct evidence. *Kettles*, 145/7, 88 S. E. 197.

Shown by conduct without direct proof of express agreement. *Bolton*, 21 A. 184, 94 S. E. 95.

Sufficient evidence of. *Turner*, 138/808, 76 S. E. 349.

Testimony rendered admissible by subsequent proof of. *Sullivan*, 121/186, 48 S. E. 949; *Barrow*, 121/187, 48 S. E. 950.

Acts and sayings of conspirator pending the common enterprise, admissible against coconspirator. *Sullivan*, 121/186, 48 S. E. 949; *Barrow*, 121/186, 48 S. E. 950; *Carter*, 106/376, 32 S. E. 345, 71 Am. St. R. 262.

Admissions of conspirator, admissible against coconspirator. *Baker*, 17 A. 279, 86 S. E. 530.

Declarations of conspirators. *Slaughter*, 113/284, 38 S. E. 854, 84 Am. St. R. 242.

Sayings and conduct of conspirators pending the conspiracy, and record of

conviction, admissible against each other. *Kirksey*, 11 A. 142, 74 S. E. 902. Confession not admissible against another. *Hicks*, 11 A. 265, 75 S. E. 12.

Sayings and conduct of, when not admissible against each other; dictum in *Kirksey's* case, 11 Ga. App. 146, disapproved. *Gray*, 13 A. 374, 79 S. E. 223.

Constitutional right invaded in obtaining evidence, no reason for setting aside conviction as contrary to evidence. *Banister*, 11 A. 15, 74 S. E. 444.

Contradiction of one another by witnesses for State, not prevent verdict against accused. *Holland*, 8 A. 470, 69 S. E. 591.

Contradictory statements, corroboration of witness who made; jury determines credibility. *Waycaster*, 136/95, 70 S. E. 883.

Conversion; presumption of fraudulent intent in. *McLendon*, 14 A. 737, 82 S. E. 317.

Conversation, part of, received, no right to introduce the rest, none of it being within *res gestæ*. *Horton*, 110/740, 35 S. E. 659.

Convict competent as witness. *Dixon*, 116/186, 42 S. E. 357.

Conviction, how proved. *Anglin*, 14 A. 566, 81 S. E. 804.

Copies of plea, verdict, and judgment, insufficient without copy of indictment. *Lewis*, 23 A. 647, 99 S. E. 147.

Parol proof of, not allowed. *Morgan*, 17 A. 125, 86 S. E. 281; *Braxley*, 17 A. 197, 86 S. E. 425.

Not shown without production of record. *Phillips*, 18 A. 109, 88 S. E. 905; *Wheeler*, 4 A. 325, 61 S. E. 409.

Of another crime; accused not allowed to meet proof of, by introducing evidence to disprove that crime. *Lewis*, 23 A. 648, 99 S. E. 147.

Of different offense, when State not allowed to prove. *Gay*, 115/204, 41 S. E. 685.

On testimony of one witness, except when. *Roberts*, 138/816, 76 S. E. 361. Coroner should not examine as witness at inquest a prisoner charged with having killed the deceased; admissions so elicited held inadmissible on his trial.

Adams, 129/250, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158.

Evidence of prisoner at coroner's inquest received over objections. **Green**, 124/343, 52 S. E. 431.

Corpus delicti, meaning of. **Garnett**, 10 A. 114, 72 S. E. 851.

Character of evidence to establish. **Lester**, 106/371, 32 S. E. 335. May be proved by circumstantial evidence. **Campbell**, 124/432, 52 S. E. 914; **Miles**, 129/589, 59 S. E. 274; **Ray**, 4 A. 70, 60 S. E. 816; **Hutchings**, 4 A. 543, 61 S. E. 837; **Harris**, 19 A. 741, 92 S. E. 225; **Wilburn**, 141/510, 81 S. E. 444.

Circumstances sufficient as to (arson) **Hurt**, 18 A. 110, 88 S. E. 901; (larceny) **McCrary**, 20 A. 194, 92 S. E. 954; (arson) **Abdallah**, 20 A. 618, 93 S. E. 260; (breaking in railroad-car and stealing) **Moore**, 14 A. 255, 80 S. E. 507; (manufacture of liquor) **White**, 18 A. 214, 89 S. E. 175; (burglary) **Peterson**, 19 A. 144, 91 S. E. 223; (larceny, from house) **Patterson**, 17 A. 341, 86 S. E. 782; (larceny) **McDuffie**, 17 A. 342, 86 S. E. 821; (arson) **Sutton**, 17 A. 713, 88 S. E. 122, 587.

Confession will not dispense with proof of. **McAllister**, 2 A. 654, 58 S. E. 1110. Must be established before conviction, by proof apart from mere extra-judicial confession of accused. **Bines**, 118/320, 45 S. E. 376, 68 L. R. A. 33. See **Sanders**, 118/329, 45 S. E. 365; **Williams**, 125/741, 54 S. E. 661. **Sutton**, 17 A. 713, 88 S. E. 122, 587.

Corroboration by proof of. **Davis**, 105/808, 32 S. E. 158; **Wimberly**, 105/188, 31 S. E. 162; **Wilson**, 6 A. 16, 64 S. E. 112; **West**, 6 A. 105, 107, 64 S. E. 130; **Douglas**, 6 A. 158, 64 S. E. 490. **Corpus delicti** of arson, not shown without proof of wilful burning. **West**, 6 A. 105, 64 S. E. 130.

Corroboration by proof of, when not sufficient. **Altman**, 5 A. 833, 63 S. 928.

Corroboration of confession by proof of. **Sneed**, 16 A. 351, 85 S. E. 354; **Simmons**, 18 A. 104, 88 S. E. 904.

Insufficient evidence of, in larceny case. **Mitchell**, 103/17, 29 S. E. 435.

May be shown by defendant's statement on his trial, but not by extra-judicial confessions or admissions alone. **Wall**, 5 A. 305, 3 S. E. 27.

Not established by proof that accused was found in possession of gold of the kind alleged to have been stolen from test-house, but identified as having come from the mine. **Hand**, 110/257, 34 S. E. 286.

Not proved, conviction unauthorized. **Franklin**, 3 A. 342, 59 S. E. 835; **Varner**, 3 A. 605, 60 S. E. 283.

Not proved, conviction set aside. (car-breaking) **Thomas**, 8 A. 95, 68 S. E. 522; (hog-stealing) **Fulmore**, 8 A. 703, 70 S. E. 77; (arson) **Devore**, 7 A. 197, 66 S. E. 484; (assault to rape) **Huey**, 7 A. 398, 66 S. E. 1023. **Corpus delicti** not shown by flight. *Ib.* 406.

Not required to be proved before the introduction of other evidence against the accused. **Williams**, 123/138, 51 S. E. 322.

Of carrying pistol without license, not established. **Brown**, 15 A. 484, 83 S. E. 890.

Proof of, essential; conviction unlawful, if not shown beyond reasonable doubt. **Tatum**, 1 A. 778, 57 S. E. 956.

Proof of, in homicide case, must show the killing and identity of the person killed. **Wall**, 5 A. 305, 63 S. E. 27.

Shown by circumstantial evidence, coupled with incriminatory admission. **Garnett**, 10 A. 109, 72 S. E. 951; **Stanley**, 10 A. 153, 72 S. E. 954.

Sufficient proof of. **Brown**, 6 A. 357, 64 S. E. 1119. Sufficient proof of, as to larceny. **Stanley**, 10 A. 153, 72 S. E. 954; **Boatwright**, 10 A. 29, 72 S. E. 599; (of cotton) **Parker**, 23 A. 591, 99 S. E. 220. As to burglary. **Garnett**, 10 A. 114, 72 S. E. 951.

Corpus delicti, proof of. See catchwords under 7, *infra*.

Corroboration, facts of, and concurrent circumstances; and when conviction authorized without them. **Parker**, 3 A. 336, 59 S. E. 823.

Necessary, of female's testimony. Incest. *Yother*, 120/204, 47 S. E. 555. Rape. *Davis*, 120/433, 48 S. E. 180.

Of accomplice. *Baker*, 121/189, 48 S. E. 967; *Harrell*, 121/607, 49 S. E. 703. Of confession, proper charge as to. *Griner*, 121/615, 49 S. E. 700.

Of accomplice, charge of court as to, considered. *Ballard*, 11 A. 106, 74 S. E. 846. Erroneous charge as to. *Howard*, 109/137, 34 S. E. 330; *Chapman*, 109/158, 34 S. E. 369.

Of accomplice in felony, law as to, not applicable under evidence or statement of accused. *Rouse*, 136/356, 71 S. E. 667.

Of accomplice, insufficient here; what necessary. *Bishop*, 9 A. 205, 70 S. E. 976. Corroboration in bastardy case, as to prosecutrix's testimony, not required. *Kennedy*, 9 A. 226, 70 S. E. 986.

Of accomplice, sufficient. *Henry*, 12 A. 221, 76 S. E. 1078; *Brooks*, 12 A. 693, 78 S. E. 143. Rule as to, not applied to misdemeanor case. *Ib.* 693.

Of accomplice, what necessary. *Milner*, 7 A. 72, 66 S. E. 280; *Smith*, 7 A. 781, 68 S. E. 335. Sufficiency of corroborating circumstances, a jury question. *Dixon*, 7 A. 604, 67 S. E. 699.

Of alleged victim of rape, error to charge as to, the other evidence tending to impeach and not to corroborate. *Coney*, 108/773, 36 S. E. 907.

Of confession by aliunde proof of corpus delicti. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33; *Sanders*, 118/329, 45 S. E. 365; *Morgan*, 120/499, 48 S. E. 238.

Of confession implicating accused as accessory before the fact of homicide; evidence sufficient. *Bivins*, 147/229, 93 S. E. 213.

Of prosecutor's testimony, what admissible. *Clay*, 122/136, 50 S. E. 56.

Of female, in rape case, whether necessary; charge to jury on what sufficient. *Vanderford*, 126/759, 55 S. E. 1025.

Of woman as to assault upon her with intent to rape, not essential. *Rivers*, 8 A. 703, 70 S. E. 50.

Rule as to, not the same in assault with intent to rape as in rape. *Scott*, 3 A. 479, 60 S. E. 112.

Sufficient charge to jury, as to corroborating circumstances. *Rice*, 16 A. 129, 84 S. E. 609.

Circumstances of, consistent with innocence and without incriminatory value, conviction set aside. *Smith*, 5 A. 833, 63 S. E. 917.

Circumstances of, in prosecution for perjury, sufficiency of. *Sikes*, 105/594, 31 S. E. 567.

Circumstances of, instructions as to, not error as against accused. *Haines*, 109/526, 35 S. E. 141.

When sufficient, though slight. *Parham*, 3 A. 468, 60 S. E. 123.

See catchword "Accomplice," supra.

Credit of prosecutor, admissibility of testimony to show state of his feeling, etc. *Jefferson*, 137/383, 385, 73 S. E. 499.

Of witness not affected, nor his being an informer shown, by being a witness against others charged like defendant on trial. *Lennard*, 104/548, 30 S. E. 780.

Of witness partially cross-examined. *Gale*, 135/351, 69 S. E. 537.

Want of credibility of evidence, as ground for setting aside conviction. *Patton*, 117/230, 234, 43 S. E. 533. Credibility of evidence for jury; though State's testimony bears inherent indicia of untruthfulness. *Plummer*, 1 A. 507, 57 S. E. 969.

Charge on credibility or impeachment of witnesses must be requested. *Horton*, 120/309, 47 S. E. 969. Jury may believe one witness, as against two with statement of accused. *Powell*, 120/181, 47 S. E. 563. Though witness be of bad character, and impeached. *Sindy*, 120/203, 47 S. E. 554. Or be contradicted by another witness for the State. *Turner*, 120/483, 48 S. E. 176.

Crime other than that charged, admissibility of testimony as to. *Ray*, 4 A. 70, 60 S. E. 816; *Thompson*, 4 A. 652, 62

S. E. 99; *Hawkins*, 6 A. 109, 64 S. E. 289; *Robinson*, 6 A. 711, 65 S. E. 792.

Crimination of self, constitutional guaranty against. *Loewenherz*, 144/557, 87 S. E. 778; *Elder*, 143/363, 85 S. E. 97.

No invasion of right as to, by introducing articles obtained by illegal search and seizure. *Calhoun*, 144/679, 87 S. E. 893; *Martin*, 148/406, 96 S. E. 882; *Hysler*, 148/409, 96 S. E. 884; *Groce*, 148/520, 97 S. E. 525.

By act or word not compelled. Evidence of guilt on person may witness against him, if found while he is under legal arrest; otherwise not. *Evans*, 106/519, 32 S. E. 659, 71 Am. St. R. 276.

Not compelled, but voluntary answer of witness received against him in subsequent trial. *Davis*, 122/564, 50 S. E. 376.

Not compelled. This provision distinct from that as to unlawful search and seizure. *Smith*, 3 A. 326, 59 S. E. 934.

Rule as to, not exclude evidence discovered in illegal search of premises of accused over his protest. *Duren*, 125/1, 53 S. E. 814.

Rule against; when not violated by admitting evidence discovered by searching him. *Dozier*, 107/709, 33 S. E. 418; *Springer*, 121/155, 157, 48 S. E. 907.

Cross-examination, right of. *Jackson*, 1723, 58 S. E. 272.

Interference with, by judge. *Andrews*, 118/4, 43 S. E. 852.

Of witness by the judge, and statement to jury touching his testimony, when erroneous. *Grant*, 122/740, 50 S. E. 946. Cf. *Johnson*, 122/670, 50 S. E. 488.

Scope of, as to former testimony. *Taylor*, 110/151, 35 S. E. 161.

Deceased witness (accomplice), proof of what he testified at committing trial. *Hardin*, 107/718, 33 S. E. 700.

Declarations and acts of prisoner, explanatory of discovery, when admissible in evidence. *Goolsby*, 133/427, 66 S. E. 159.

Accompanying acts, when admissible; when not. *Sullivan*, 101/800, 29 S. E. 16.

Admissible, though not as admissions or confessions. *Shaw*, 102/661, 29 S. E. 477.

Of accused, after act charged, when admissible. *Park*, 126/576, 55 S. E. 489; *Lanier*, 126/586, 55 S. E. 496; *Shuler*, 126/630, 55 S. E. 496.

After difficulty, if not *res gestæ*, harmless error to receive, prisoner's statement admitting the fact. *Dill*, 106/683, 32 S. E. 660.

By accused's wife in his presence, to show threat by him, when not admissible. *Chapman*, 109/157, 34 S. E. 369.

Of decedent immediately before fatal encounter, near enough to be heard by slayer, and indicating a pacific mental attitude toward him, admitted. *Hightower*, 9 A. 236, 70 S. E. 1022.

By deceased, of peaceful intent, admitted in rebuttal of evidence of his prior threats. *Taylor*, 121/348, 49 S. E. 303.

In the nature of a threat, when admissible. *Sanders*, 113/270, 38 S. E. 841.

Of accused, before trial, inadmissible for him. *Barnes*, 3 A. 333, 59 S. E. 937.

Of accused, in a half-minute after killing, when not admitted as *res gestæ*. *Thornton*, 107/683, 33 S. E. 673.

Of accused in his own favor, admissibility of. *McCullough*, 11 A. 612, 76 S. E. 393. Against himself. *Davis*, 11 A. 804, 76 S. E. 391. Of accomplice. *Hicks*, 11 A. 265, 75 S. E. 12.

Of accused, self-serving, before or after time of alleged offense, not admissible. *Dixon*, 116/186, 42 S. E. 357; *Williams*, 123/141, 51 S. E. 322; *Ware*, 139/109, 76 S. E. 857.

Of accused, that he alone committed the offense, not admissible on trial of another jointly indicted with him. *Robison*, 114/445, 40 S. E. 253.

Of alleged principal, when not admissible against alleged accessory. *Howard*, 109/137, 34 S. E. 330.

Of bystanders, and of accused, just after shooting, when admissible. *Fuller*, 127/47, 55 S. E. 1047.

Of bystander in answer to inquiry "Who was that shot me?" how admissible. *Knight*, 114/48, 39 S. E. 928. 88 Am. St. R. 17.

Of conspirators. *Slaughter*, 113/284, 38 S. E. 854, 84 Am. St. R. 242; *Kirksey*, 11 A. 142, 74 S. E. 902. Of child. *Williams*, 11 A. 663, 75 S. E. 988.

Of deceased person. *Land*, 11 A. 762, 7 S. E. 78; *Cobb*, 11 A. 52, 74 S. E. 702; *Owens*, 11 A. 419, 75 S. E. 519.

Of deceased, as to cause of death and who killed him, when admissible. *Parks*, 105/242, 31 S. E. 580.

Of deceased, not communicated to accused, inadmissible. *Perry*, 102/368, 30 S. E. 903.

Of deceased, that he expected to be killed by accused, not admissible. *Tiget*, 110/244, 34 S. E. 1023.

Of defendant after act committed, not *res gestæ*, inadmissible. *Williams*, 108/748, 32 S. E. 660. Aliter, of one wounded, that he was shot, just after pistol fired. *Gaines*, 108/772, 33 S. E. 632.

Of accused after homicide, excluded as not free from suspicion of device or afterthought. *Tucker*, 133/470, 66 S. E. 250.

Of innocence by accused, not admissible in his favor. *Kennedy*, 101/559, 28 S. E. 979.

Of member of riotous assembly, admissible against the others. *Green*, 109/544, 35 S. E. 97.

Of one accused of murder, soon after wound inflicted, indicating malice or indifference, admissible. *Perry*, 110/234, 36 S. E. 781.

Of one jointly indicted with accused separately tried, when not admissible in evidence. *Gibbs*, 144/166, 86 S. E. 543.

Of person killed, when admissible in homicide case, to show animus. *Miller*, 9 A. 599, 71 S. E. 1021.

Of person other than accused, admitting the crime. not admissible. *Beach*, 138/265, 75 S. E. 139.

Of wounded man to hospital surgeon was not admissible as part of *res gestæ*. *Hunter*, 147/823, 95 S. E. 668.

Tending to show malice or motive. *Roberts*, 123/148, 51 S. E. 374; *Campbell*, 123/533, 51 S. E. 644.

Demand for payment, sufficiently shown by presentation of bill for payment. *Foss*, 15 A. 478, 83 S. E. 880.

Denial of identity, as circumstance of guilt. *Johnson*, 120/135, 47 S. E. 510.

Detective, weight of testimony of. *Venable*, 8 A. 575, 70 S. E. 28; *Ford*, 13 A. 68, 78 S. E. 782; *Smith*, 15 A. 713, 84 S. E. 159.

Proper charge to jury as to credibility of testimony of. *Clark*, 5 A. 605, 63 S. E. 606.

Reason of, for being on watch for commission of crime; admissibility of testimony as to prior remark of accused. *Strickland*, 12 A. 640, 77 S. E. 1070.

Different crimes, admissibility of evidence as to. *Cawthon*, 119/396, 46 S. E. 897.

Difficulty or quarrel years before homicide, when incompetent. *Horton*, 110/739, 35 S. E. 659.

Doubt, as ground for setting aside conviction. *Patton*, 117/237, 43 S. E. 533.

Duress of witness, admissibility of proof as to. *Kimbrough*, 9 A. 301, 70 S. E. 1127.

Dying declarations, admissibility of. *Lyons*, 133/588, 66 S. E. 792; *Washington*, 137/218, 73 S. E. 512; *Cook*, 134/347, 348, 67 S. E. 812; *Cason*, 134/786, 68 S. E. 554; *Anderson*, 117/255, 43 S. E. 835; *Park*, 126/575, 55 S. E. 489. Admissible. *Perdue*, 135/278, 69 S. E. 184. What admissible as. *Bush*, 109/123, 34 S. E. 298; *Parks*, 105/242, 31 S. E. 580. What testimony not admissible as. *Glover*, 137/82, 72 S. E. 926. When admissible. *Cash*, 18 A. 486, 89 S. E. 603; *Childs*, 18 A. 782, 90 S. E. 723; *Darby*, 22 A. 606, 96 S. E. 707; *Shields*, 22 A. 618.

97 S. E. 90; **Brinson**, 22 A. 650, 97 S. E. 102. When admissible; admissibility not affected by statements made to decedent. **Smith**, 9 A. 403, 71 S. E. 606. When admissible, under proper instruction to jury. Constitutional right not violated. **Jones**, 130/274, 60 S. E. 840. Other evidence considered with. **Robinson**, 130/362, 60 S. E. 1005. No error in admitting. **Johnson**, 136/804, 72 S. E. 233.

Charge as to, not subject to exception taken. **Finley**, 125/579, 54 S. E. 106. Not requiring new trial. **Knight**, 12 A. 111, 116, 76 S. E. 1047. Inaccurate, not require new trial, in view of entire charge. **McMillan**, 128/25, 57 S. E. 309; Error in charge on. **Robinson**, 10 A. 462, 73 S. E. 622; **Darby**, 9 A. 701, 72 S. E. 182; **Bush**, 109/125, 34 S. E. 298. Error in charging jury on, not harmful here. **Brown**, 8 A. 382, 69 S. E. 45. Instructions which should be given as to. **Knight**, 12 A. 111, 76 S. E. 1047. Necessary instructions as to. **Denton**, 6 A. 3, 63 S. E. 1132. Proper instructions to jury as to. **Cobb**, 11 A. 52, 74 S. E. 702; **Owens**, 11 A. 419, 75 S. E. 519; **Land**, 11 A. 762, 76 S. E. 78; **Proppes**, 22 A. 254, 95 S. E. 939; **Cash**, 18 A. 486, 89 S. E. 603; **Childs**, 18 A. 782, 90 S. E. 723. Proper refusal to charge jury on argumentative statement as to. **Jefferson**, 137/388, 73 S. E. 499. Omission of instruction to jury that they were not bound to accept dying declarations admitted by the court; not error, in absence of request. **Cash**, 18 A. 486, 89 S. E. 603. Charge warranted by evidence. **Curtis**, 2 A. 224, 58 S. E. 291. Inaccurate instruction to jury as to, favorable to accused, he was not entitled to complain of. **Robinson**, 17 A. 751, 88 S. E. 410. Court not required to charge jury that "great caution is necessary in the use of this kind of evidence." **Robinson**, 17 A. 751, 88 S. E. 410.

Conclusion, declaration by person mortally wounded that a named person had "assassinated" him, not objection-

as. **Owens**, 11 A. 419, 75 S. E. 519. That the accused shot without cause, not objectionable as stating a conclusion. **McMillan**, 128/25, 57 S. E. 309; **Brown**, 8 A. 386, 69 S. E. 45. Excluded as a mere conclusion. **Ogle-tree**, 115/835, 42 S. E. 255.

Consciousness of condition inferred. **Barnett**, 136/65, 70 S. E. 868. Admissible though declarant did not express consciousness of impending dissolution. **Jefferson**, 137/382, 73 S. E. 499. Admitted on prima facie showing. Whether declarant conscious of his condition, etc., issue of fact. **Anderson**, 133/161, 50 S. E. 46; **Findley**, 125/579, 54 S. E. 106. Declaration by one not shown to have been conscious of his condition, inadmissible. **Sutherland**, 121/191, 48 S. E. 915. Incompetent because physician informed declarant there was a chance for him to recover. **Wheeler**, 112/43, 37 S. E. 126; **Thompson**, 137/164, 73 S. E. 363. Deceased knew he was in extremis, if he "realized that he was mortally wounded." **Davis**, 120/843, 48 S. E. 305. Whether declarant's remark that "he never expected to get up," meant he realized that he was in a dying condition, was a question for the jury. **Bird**, 128/254, 57 S. E. 320. Declarations in articulo mortis admissible though no proof that declarant used other language importing that he was dying. Circumstances left to jury under proper instructions. **Young**, 114/849, 40 S. E. 1000.

Contradictory declarations not received to impeach, when. **Land**, 11 A. 762, 76 S. E. 78. Contradictory declarations of deceased, admissible. **Pyle**, 4 A. 811, 62 S. E. 540.

Corroborated by inferences authorized by testimony, conviction of murder sustained. **Roberts**, 138/815, 76 S. E. 361. Declarations of one of two persons shot, not admissible on trial of slayer for killing the other. Made after lapse of a week, not admissible. **Taylor**, 120/857, 48 S. E. 361.

Preliminary proof of, for court; but not conclusive on jury, etc. **Smith**, 118/61, 44 S. E. 817. Sufficient to authorize admission. **Grant**, 118/804, 45 S. E. 603. No error in admitting, on preliminary showing. How it should be limited. **Hawkins**, 141/212, 80 S. E. 711. Dying declarations to be received cautiously; but slight preliminary proof sufficient. **Moody**, 1 A. 773, 58 S. E. 262.

Preliminary evidence sufficient to authorize introduction. Error in admitting, not held material. **Smith**, 23 A. 77, 97 S. E. 454. Prima facie showing essential to admission of, that declarant was in article of death and conscious of his condition. **Robinson**, 130/362, 60 S. E. 1005; **McMillan**, 128/25, 57 S. E. 309; **Bird**, 128/254, 57 S. E. 320. Evidence sufficient to show prima facie that the declarant was in articulo mortis, and conscious of his condition; submitted to jury with proper instruction. **Anderson**, 117/255, 43 S. E. 835. Prima facie admissible. **Grubbs**, 13 A. 31, 78 S. E. 775; **Wimbish**, 13 A. 653, 79 S. E. 744; **McDonald**, 12 A. 529, 77 S. E. 655; **Williams**, 148/483, 97 S. E. 77.

Credibility of declarant, attacked by proof of general bad character, etc.; error in not charging jury as requested on rules governing credibility. **Robinson**, 10 A. 462, 73 S. E. 622.

Evidence of, admissible. **Harris**, 142/627, 83 S. E. 514.

Exception not sufficient, in not setting out testimony introduced in connection with declaration. Objection that statement was "hearsay," not sustained. **Ransom**, 23 A. 364, 98 S. E. 255.

Expression of belief or opinion not admitted as. **Kearney**, 101/803, 29 S. E. 127, 65 Am. St. R. 344; **Sweat**, 107/712, 33 S. E. 422; **Ogeltree**, 115/835, 42 S. E. 255. Expression of opinion in declaration (that the shooting of the declarant was accidental), 67

court could charge jury to disregard, as without probative value. **Gray**, 12 A. 634, 77 S. E. 916.

Foundation for, presumed laid. **Mayes**, 108/787, 33 S. E. 811. Foundation sufficient. **Owens**, 11 A. 419, 75 S. E. 519; **Gibbons**, 137/786, 74 S. E. 549; **Brown**, 8 A. 382, 69 S. E. 45. Not sufficient. **Darby**, 16 A. 172, 84 S. E. 724.

How to be considered. **Hall**, 124/649, 52 S. E. 891.

Identity of person, whether sufficient as to. **Odum**, 13 A. 687, 79 S. E. 858.

Impeachment of. **Washington**, 137/219, 73 S. E. 512.

Judge passes on sufficiency of foundation for. Charge as to, upheld. **Smith**, 110/255, 34 S. E. 204.

Jury need no emphasis from the bench as to weight of evidence as to. **Sewell**, 142/798, 83 S. E. 934. Jury should be instructed as to caution to be observed in receiving them; no sufficient exception as to refusal so to charge, here. **Smith**, 9 A. 407, 408, 71 S. E. 606.

Law as to. **Josey**, 137/769, 74 S. E. 282. Applied where testimony received without objection. **Williams**, 139/688, 77 S. E. 1062.

Person killed in transaction to which the trial relates, but not the person whom the defendant is charged with killing, declaration of, not admissible. **Miliken**, 8 A. 478, 69 S. E. 915. Prima facie showing for admitting, with proper instruction to jury. **Thompson**, 137/164, 73 S. E. 363; **Harper**, 129/770, 59 S. E. 792; **Oliver**, 129/777, 59 S. E. 900.

Proof of, may be made by witness not able to testify as to dying condition of declarant, where others supply the required proof as to declarant's condition. **Smith**, 8 A. 680, 70 S. E. 42.

Properly received and charged on. **Devereaux**, 140/225, 78 S. E. 849.

Questions, dying declarations not excluded because made in response to. **Brinson**, 22 A. 650, 97 S. E. 102.

Reason for admitting. *McArthur*, 120/195, 47 S. E. 553.

Dying declaration not (as matter of law) presumed true or given the sanctity of truth. *Robinson*, 130/362, 60 S. E. 1005.

Statement of rule as to, in admitting evidence, not error here. *Solomon*, 2 A. 92, 58 S. E. 381.

Variance in witness's testimony of, no ground for excluding it. *Carter*, 2 A. 254, 58 S. E. 532.

Weight of dying declaration should be left to jury; error in instruction to the effect that the theory of the law is that they are as truthful as if made on oath. *Baker*, 12 A. 553, 77 S. E. 884; *Darby*, 16 A. 171, 84 S. E. 724. Undue weight given to, in charge of court; request to charge contained true rule as to. *Pyle*, 4 A. 811, 62 S. E. 540.

Wounded person, statement of, who died "pretty soon after" making it, was not dying declaration. *Howard*, 144/169, 86 S. E. 540.

Written, but not signed, when admissible. Part of, irrelevant and inadmissible, excluded. *Wheeler*, 112/43, 37 S. E. 126. **Dying declaration made orally, not rendered inadmissible by subsequent declaration reduced to writing.** *Odom*, 13 A. 687, 79 S. E. 858. **Testimony as to, not excluded because another had committed the statement to writing.** *Mixon*, 7 A. 805, 808, 68 S. E. 315. **Written report of, not highest evidence.** *Ib.* 809. **Written by hand of another than deceased, when admissible. Part not competent as, harmless error in not excluding. Subject to attack by proof of general bad character.** *Perry*, 102/365, 30 S. E. 903.

Election primary, parol proof of. *Lepinsky*, 8 A. 285, 66 S. E. 965.

Errors in admission of evidence, to prove malice, and in charge, when no cause for reversal. *Rawls*, 124/11, 52 S. E. 72.

Escape, refusal to, on opportunity; not admissible evidence. *Kennedy*, 101/559, 28 S. E. 979.

Excitement, public, and danger of lynching, evidence as to, when immaterial on trial of issue as to guilt. *Brown*, 105/640, 31 S. E. 557.

Exclamation, upon receiving mortal wound, as to wife and children, part of res gestæ. *Goodman*, 122/111, 49 S. E. 922.

Expert and non-expert testimony as to cause of death. *Lanier*, 141/18, 80 S. E. 5.

Weight of expert testimony for jury. *Wall*, 112/336, 37 S. E. 371.

Explanation of circumstances of guilt, admissible. *Johnson*, 120/136, 47 S. E. 510.

Unreasonable, by defendant; effect of. *Davis*, 4 A. 274, 61 S. E. 132.

False, a circumstance tending to show guilt. *Gantz*, 18 A. 154, 88 S. E. 993.

False representation. Admissibility of opinion as to solvency. *Cabaniss*, 8 A. 130, 68 S. E. 849. **Knowledge of falsity may be shown by circumstantial evidence; evidence insufficient here.** *Hester*, 8 A. 380, 69 S. E. 31.

False testimony formerly given by witness under fear of conviction of crime, effect of, on his credibility. *Chandler*, 124/821, 53 S. E. 91.

Formerly given under influence of threats of bodily harm, for jury. *Huff*, 104/521, 30 S. E. 808.

In material particular is cause for rejection of witness's entire evidence, unless corroborated. *Garland*, 124/832, 53 S. E. 314.

Under duress of threats and menaces, what necessary to excuse witness. *Huff*, 104/523, 30 S. E. 808.

Admission by witnesses on oath, after trial, that their testimony on which conviction was based was false, not cause for new trial. *Clark*, 117/254, 43 S. E. 853; *Rogers*, 129/590, 59 S. E. 288; *Burris*, 17 A. 331, 86 S. E. 739; *Smith*, 148/332, 96 S. E. 632.

Feeling or intimacy between witness and deceased in murder case, evidence as to, when admissible. *Daniel*, 103/202, 29 S. E. 767.

Ill, of accused toward decedent, not illustrated by conversation more than one year before. *Scrutchens*, 146/189, 91 S. E. 25.

Of accused, circumstances indicating state of, were not altogether irrelevant and immaterial. *Ray*, 142/656, 83 S. E. 518.

Of deceased towards slayer, admissibility of proof as to. *Sasser*, 129/541, 59 S. E. 255.

Of witness; proof that witness for accused was his paramour, allowed, to show her state of feeling. *Brown*, 119/572, 46 S. E. 833.

Of witness, testimony on state of, admissible. *Nix*, 120/166, 47 S. E. 516.

Testimony illustrating state of. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; *Brooks*, 134/784, 68 S. E. 504.

Fish, dynamiting; circumstances authorizing conviction. *Bracewell*, 21 A. 133, 94 S. E. 91.

"Fishing," proof of, not proof of "catching fish." *Knight*, 15 A. 474, 83 S. E. 797. Sufficient proof of venue. *Ib.*

Flight and breaking jail, as circumstance of guilt. That accused did not flee, though with opportunity, irrelevant. *Flannigan*, 136/132, 70 S. E. 1107.

Accused not allowed to prove he did not attempt. *Lingerfelt*, 125/4, 53 S. E. 803, 5 Ann. Cas. 310; *Register*, 10 A. 623, 74 S. E. 429; *Dunn*, 13 A. 682, 79 S. E. 764.

As circumstance to show guilt. *Hudson*, 101/520, 28 S. E. 1010; *Smith*, 106/674, 32 S. E. 851, 71 Am. St. R. 286; *Johnson*, 120/135, 47 S. E. 510; *Hall*, 133/178, 65 S. E. 400; *Barnett*, 136/65, 70 S. E. 868; *Sims*, 144/90, 86 S. E. 230; *Kettles*, 145/6, 88 S. E. 197; *Glover*, 15 A. 45, 53, 82 S. E. 602; *Smith*, 16 A. 293, 294, 85 S. E. 281; *Benjamin*, 16 A. 376, 85 S. E. 349; *Gantz*, 18 A. 154, 88 S. E. 993; *Stokes*, 19 A. 239, 91 S. E. 271.

As circumstance to show guilt; not alone sufficient. *Smith*, 14 A. 612, 81 S. E. 817. Charge of court as to, considered. *Black*, 14 A. 534, 81 S. E. 588.

Desire to take, as circumstance of guilt. *Hixon*, 130/481, 61 S. E. 14.

Inference from, as to consciousness of guilt. *Fountain*, 23 A. 123, 98 S. E. 179; *Williams*, 23 A. 129, 97 S. E. 563.

Shown by circumstantial evidence. *Terry*, 15 A. 108, 82 S. E. 635.

Sheriff may testify he tried to find accused and found him at other place. *Turner*, 114/425, 40 S. E. 308.

Evidence authorizing charge to jury as to. *Wilkes*, 16 A. 185, 84 S. E. 721.

As circumstance to show guilt; proper instructions to jury on. *Thomas*, 129/419, 59 S. E. 246; *Middleton*, 7 A. 1, 66 S. E. 22. Harmless inaccuracy in charge. *Ib.*; *Hall*, 7 A. 116, 120, 66 S. E. 390. Charge as to, error, where there was no evidence as to flight. *Jones*, 123/129, 51 S. E. 312.

Not sufficient to prove corpus delicti. *Huey*, 7 A. 406, 66 S. E. 1023.

Proof as to, met by proof that accused had given appearance bond; rebuttal by proof of forfeiture of bond. *Davis*, 11 A. 804, 76 S. E. 391.

Upon seeing policeman of town where offense committed, in another place, when relevant. *Grant*, 122/740, 50 S. E. 946.

Footprints, as circumstance. *Morris*, 12 A. 810, 78 S. E. 477. Shoes found in road. *Hawthorne*, 12 A. 811, 78 S. E. 473.

Former acts of like character, admissibility of proof as to. *Sullivan*, 121/186, 48 S. E. 949.

Former conduct, inadmissible testimony as to. *Holmes*, 12 A. 359, 77 S. E. 187.

Former crime, admissibility of proof as to; rule and exceptions. *Lee*, 8 A. 413, 69 S. E. 310; *McDuffie*, 17 A. 343, 86 S. E. 821; *Griffin*, 18 A. 462, 464, 89 S. E. 537; *Bates*, 18 A. 718, 719, 90 S. E. 481; *Goldberg*, 20 A. 163, 92 S. E. 957; *Webb*, 7 A. 37, 66 S. E. 27.

Inadmissible testimony as to. **Cooper**, 13 A. 697, 79 S. E. 908; **Wiggins**, 14 A. 314, 80 S. E. 724.

Error in allowing State to introduce evidence as to former conviction, to rebut presumption of accused. **Grace**, 19 A. 606, 92 S. E. 231.

Former difficulty, when not admissible in evidence. **Daniel**, 103/202, 29 S. E. 767.

Former proceeding, civil, not usually admissible in criminal case as evidence of fact involved in the former. Admissible to prove admission, when. **Wilcox**, 8 A. 536, 69 S. E. 1086.

Former quarrels between the parties, admissible on trial of one charged with assault, to show motive or malice. **Smallwood**, 9 A. 300, 70 S. E. 1124.

Not too remote to be relevant, on trial for assault with intent to murder. **Jackson**, 18 A. 683, 90 S. E. 368.

Former transactions, admissibility of evidence as to. **Clarke**, 5 A. 95, 62 S. E. 663; **Denham**, 5 A. 303, 63 S. E. 62; **Saffold**, 11 A. 329, 75 S. E. 338; **Mangham**, 11 A. 428, 75 S. E. 512; **McCrary**, 11 A. 787, 76 S. E. 163.

Gaming; credibility of one witness, contradicted by six, settled by verdict. **Pyles**, 3 A. 29, 59 S. E. 193. So as to one witness contradicted by another introduced by same side. **Barber**, 3 A. 598, 60 S. E. 285.

Grand jurors, testimony as to who served as, and who did not; when admissible. **Bexley**, 141/1, 80 S. E. 314.

Grand jury, evidence not introduced before, not inadmissible for that reason, on trial. **Bass**, 103/228, 29 S. E. 966.

Evidence of action of, primary and secondary. **Elliott**, 1 A. 114, 57 S. E. 972.

Guilt, inference of, from silence when incriminating statement made. **Jones**, 2 A. 433, 58 S. E. 559.

Inferred from circumstances, but they must be affirmatively proved. **Griffin**, 2 A. 534, 58 S. E. 781.

Presumption of, from recent and unexplained possession of stolen goods, is not one of law. **Cuthbert**, 3 A. 600, 60 S. E. 322.

Statement or conduct indicating consciousness of, when admissible in evidence as a circumstance. **Hixon**, 130/479, 61 S. E. 14.

Gun, charge of shooting with, sustained by proof of shooting with pistol. **Hill**, 147/650, 95 S. E. 213.

Habit, as tending to show absence of criminal intent. **Southern Ry. Co.**, 6 A. 43, 64 S. E. 308.

Of accused, not of others, admissible to throw light on his intention. **Baldwin**, 120/189, 47 S. E. 558.

Of compliance with law; inadmissible testimony. **S. A. L. Ry.**, 23 A. 74, 97 S. E. 549.

Of deceased to carry weapon, known to accused, when may be shown in murder case. **Daniel**, 103/202, 29 S. E. 767.

Of violating law, irrelevant testimony as to. **Wiggins**, 14 A. 314, 80 S. E. 724.

Hearsay evidence, that pistol was not loaded, not admissible. **Jones**, 139/104, 76 S. E. 748.

No basis for conviction. **Morris**, 5 A. 139, 62 S. E. 711; **Hanjaras**, 6 A. 576, 65 S. E. 356.

Homicide, admissibility of evidence on trial for. **Lucas**, 146/315, 91 S. E. 72.

Declarations as part of *res gestæ*. **Crumley**, 23 A. 312, 98 S. E. 230.

Husband and wife, woman as witness may deny relation of, between herself and accused. **Hoxie**, 114/19, 39 S. E. 944. Communications between, proved by one who overheard. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

As witness on trial of another for adultery with wife. **Thomas**, 115/235, 41 S. E. 578.

Not competent to testify on trial of his wife. **Ector**, 10 A. 777, 74 S. E. 295.

Or wife of one of joint defendants not allowed to testify for the other. **Stephens**, 106/117, 32 S. E. 13. When

competent as witness on trial of one jointly indicted with either. *Rivers*, 118/42, 44 S. E. 859.

Identification by tracks, etc. *Morris*, 12 A. 810, 78 S. E. 477; *Hawthorne*, 12 A. 811, 78 S. E. 473.

By tracks or by voice, discussion as to; testimony as to voice here insufficient to sustain conviction. *Patton*, 117/230, 235, 43 S. E. 533.

By voice. *Morris*, 6 A. 397, 65 S. E. 58.

Of accused, and of gun-shells, admissibility of testimony. *Goodwin*, 148/33, 95 S. E. 674.

Of stolen goods, by correspondence in quality, variety, and brand. *Jordan*, 119/443, 46 S. E. 679.

Identity of accused, sufficient testimony as to. *Webb*, 133/585, 587, 66 S. E. 784.

Issue as to, in bigamy case; newly discovered evidence not requiring new trial on. *Oliver*, 7 A. 696, 67 S. E. 886.

Inadmissible testimony as to Bertillon measurements by another. *Oliver*, 7 A. 696, 67 S. E. 886.

Of accused with perpetrator; burden of proof. *Raysor*, 132/237, 63 S. E. 786.

Of person committing crime, new trial on account of new evidence as to. *Carson*, 20 A. 82, 92 S. E. 549; *Nolan*, 14 A. 824, 82 S. E. 377.

Of person, evidence not sufficient as to. *Stokes*, 19 A. 235, 239, 91 S. E. 271.

Of stolen cotton shown. *Parker*, 23 A. 591, 99 S. E. 220.

Sufficiency of testimony as to. *Banks*, 13 A. 182, 78 S. E. 1014; *Ball*, 9 A. 165, 70 S. E. 888. Evidence unsatisfactory as to, but sufficient to support verdict. *Lovett*, 9 A. 232, 70 S. E. 989.

When proved by opinion. *Gray*, 6 A. 428, 432, 65 S. E. 191.

Whether a matter of opinion or of knowledge; question for jury. *Williams*, 15 A. 306, 82 S. E. 938.

Idleness of the accused, error in admitting testimony as to, harmless. *Griffin*, 15 A. 552, 83 S. E. 871; *Smith*, 15 A. 614, 84 S. E. 159.

Impeaching testimony, no ground for setting aside conviction. *Walker*, 5 A. 367, 63 S. E. 142; *Soell*, 4 A. 341, 61 S. E. 514; *Holloway*, 10 A. 49, 72 S. E. 512; *Barrow*, 11 A. 29, 74 S. E. 440.

But not original evidence, prosecutor's admissions received as. *Belt*, 103/13, 29 S. E. 451.

Impeachment and sustainment of witness. *Brantley*, 133/265, 65 S. E. 426; *Rouse*, 136/356, 71 S. E. 667; *Harris*, 1 A. 138, 57 S. E. 937; *Powell*, 122/571, 50 S. E. 369.

By disproving testimony. *Walker*, 118/758, 45 S. E. 608.

By former false testimony; credibility not dependent solely on satisfactory account of former testimony. *Shaw*, 102/661, 29 S. E. 477; *Rheinhardt*, 102/690, 29 S. E. 443.

By proof of bad character. *Kelly*, 118/329, 45 S. E. 413; *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

By proof of bad character. Sustaining witness may testify that he would nevertheless believe the witness so attacked. *Suddeth*, 112/407, 37 S. E. 747.

By proof of contradictory statements. *Kelly*, 118/329, 45 S. E. 413. Charge as to, upheld. *Bone*, 102/387, 30 S. E. 845.

By proof of contradictory statements, witness not supported by proof of his other declarations. *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17. If jury believes his testimony, it may be basis for verdict. *Haywood*, 114/111, 39 S. E. 948.

By proof of past immorality, not competent. Witness may be discredited thereby, on his own testimony. *Wheeler*, 112/43, 37 S. E. 126.

By proof of perjury. *Stone*, 118/711, 45 S. E. 630, 98 Am. St. R. 145.

By record of conviction of misdemeanor not involving moral turpitude, not allowed. *Andrews*, 118/1, 43 S. E. 852.

By record of conviction of one jointly indicted, introduced as witness for accused. *Shaw*, 102/661, 29 S. E. 477.

By report of testimony at prior trial, foundation for, how laid. *Taylor*, 110/151, 35 S. E. 161.

Charge and failure to charge as to, considered. *Huff*, 104/521, 30 S. E. 808.

Of one's own witness, not allowed, where his testimony is not prejudicial. *Rickerson*, 106/391, 33 S. E. 639.

By previous contradictory affidavit. *Owens*, 139/92, 76 S. E. 860.

By proof of conduct; delay in having accused arrested. *Merritt*, 107/675, 34 S. E. 361.

By proof of conviction; not of arrest or indictment. *Beach*, 138/265, 75 S. E. 139.

Failure to charge as to, without request, no error. *Dwelling*, 114/31, 39 S. E. 927; *Harris*, 114/35, 39 S. E. 928; *Robison*, 114/445, 40 S. E. 253; *Joiner*, 105/646, 31 S. E. 556; *Waters*, 103/571, 29 S. E. 966.

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Rule as to, applies to both civil and criminal cases. *Waycaster*, 136/103, 70 S. E. 883.

Statutory methods for, not exclusive, erroneous charge as to. *Chapman*, 109/158, 34 S. E. 369.

Definition of "impeached." As used in Civil Code, § 5884, it is synonymous with "attacked." *Smith*, 109/479, 35 S. E. 59.

Right of jury to believe impeached witness. *Kelly*, 118/329, 45 S. E. 413; *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145; *Grant*, 118/804, 806, 45 S. E. 603. Right of jury to disbelieve. *Long*, 127/350, 56 S. E. 444.

Of witness who has entrapped party calling him, rule as to, when not applicable. *Beach*, 138/265, 75 S. E. 139.

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Improbability of testimony, and bad character, ill will, and interest of State's witness, no reason for reviewing court to set aside conviction. *Ford*, 13 A. 68, 78 S. E. 782.

Incompetent evidence to discredit immaterial testimony for accused, not reversible error to admit. *Mayes*, 108/787, 33 S. E. 811.

Incriminating statements, independent facts discovered in consequence of, when admissible in evidence. *Goolaby*, 133/427, 66 S. E. 159.

Inculpatory statement, evidence of, admissible. *Smarrrs*, 131/21, 61 S. E. 914; *Arnold*, 131/494, 62 S. E. 806.

Indictment as evidence of reputation. *Rivers*, 118/42, 44 S. E. 859.

Against accused for prior similar offense, and his plea of guilty thereon, not admissible against him. *McCain*, 2 A. 391, 58 S. E. 550.

Admissibility of, on question of credibility of witness. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Admissibility of indictment in another case, as evidence. *Weldon*, 21 A. 332, 94 S. E. 326; *Hayes*, 126/95, 54 S. E. 809; *Nance*, 126/95, 54 S. E. 932.

Evidence wanting to support conviction, not aided by "exhibit to bill of indictment." *Sappington*, 114/269, 40 S. E. 241.

Evidence to show offense, not admissible unless warranted by allegations of. *Hudson*, 104/723, 30 S. E. 947.

Information, that witness acted on, when admissible as explanation, etc. *Coleman*, 127/282, 56 S. E. 417.

Innocence, presumption of, removed by proof that accused committed the homicide. *Elliott*, 132/758, 64 S. E. 1090.

Insolvency. Admissible evidence on trial of director. *Stapleton*, 19 A. 37, 90 S. E. 1029.

Instrument of homicide, rock admitted as, on what showing. *Dill*, 106/683, 32 S. E. 660.

Intent and motive, evidence relevant to show. *Frank*, 141/244, 80 S. E. 1016.

Admissibility of declaration as tending to show. *Sanders*, 113/270, 38 S. E. 841.

Admissibility of declaration of accused as to. *Strickland*, 12 A. 640, 77 S. E. 1070.

Circumstances showing intent in pointing pistol. *Parsons*, 16 A. 212, 84 S. E. 974.

Drunkenness of slayer, as illustrating *quo animo*. *Dunn*, 16 A. 9, 84 S. E. 488.

Every one presumed to intend the natural and legitimate consequences of his acts. *Reddick*, 11 A. 150, 74 S. E. 901; *Gaynor*, 12 A. 601, 77 S. E. 1072.

Felonious, evidence unsatisfactory as to, verdict set aside. *Jackson*, 116/578, 42 S. E. 750.

Former transactions, as tending to show. *Clarke*, 5 A. 95, 62 S. E. 663; *Denham*, 5 A. 303, 63 S. E. 62.

Fraudulent, inferred from use of another's money, when. *Orr*, 6 A. 629, 65 S. E. 582; *Mangham*, 11 A. 427, 75 S. E. 512. Declarations of accused, as evidence of. *Davis*, 11 A. 804, 76 S. E. 391.

How shown; always a vital question. *Lee*, 102/223, 29 S. E. 264.

Inference as to fraudulent intent of agent in not remitting money. *Dixon*, 16 A. 290, 85 S. E. 257.

Inference of intent, in case of sale of incumbered crop. *Smith*, 17 A. 554, 87 S. E. 829. When illustrated by other criminal acts than charged. *McDuffie*, 17 A. 343, 86 S. E. 821.

Inferential; not make case of circumstantial evidence. *Leve*, 9 A. 874, 72 S. E. 433.

In shooting from inside of house at person outside; admissibility of testimony. *Day*, 133/434, 66 S. E. 250.

Of accused, illustrated by slaying of other person immediately preceding homicide of accused's wife. *Lampkin*, 145/40, 88 S. E. 563.

Sufficient evidence as to. Stealing. *Coleman*, 122/136, 50 S. E. 56; *Patterson*, 122/587, 50 S. E. 489. Murder. *Ham*, 122/574, 50 S. E. 342.

To point pistol, inferred from circumstances. *Hawkins*, 8 A. 705, 70 S. E. 53.

Issue of, when determined by course of dealing, rather than by written declarations of the parties. *Anderson*, 2 A. 1, 58 S. E. 401.

Motive for the offense need not appear, to authorize conviction of assault with intent to murder, on circumstantial evidence. *Prater*, 16 A. 296, 85 S. E. 204.

Other acts than that charged, admissible to illustrate intent, when. *Wyatt*, 16 A. 817, 81 S. E. 802; *Lee*, 8 A. 413, 69 S. E. 310; *Saffold*, 11 A. 329, 75 S. E. 338; *Mangham*, 11 A. 428, 75 S. E. 512; *McCrary*, 11 A. 787, 76 S. E. 163.

Presumption as to. *Chelsey*, 121/340, 49 S. E. 258; *Shrouder*, 121/617, 49 S. E. 702.

Presumption of; and burden of proof. *Barnes*, 3 A. 333, 59 S. E. 937; *Franklin*, 3 A. 342, 59 S. E. 835. Proof sufficient. *Little*, 3 A. 442, 60 S. E. 113. Proof not sufficient. *Rickerson*, 3 A. 443, 60 S. E. 114; *Young*, 3 A. 463, 60 S. E. 117. Doubt as to. *Warnack*, 3 A. 590, 60 S. E. 288.

Presumption of intent to kill, from weapon used. *Conley*, 21 A. 135, 94 S. E. 261.

Presumption of, rebutted. *Campbell*, 127/307, 56 S. E. 417.

Reasonable doubt of, verdict set aside. *Dorsey*, 108/477, 34 S. E. 135.

Rule of presumptive evidence as to, when invalid. *Latson*, 136/681, 71 S. E. 1052.

Shown by conduct before and after lease of house used for lawful purpose. *Kessler*, 126/726, 55 S. E. 963, 8 Ann. Cas. 180.

Shown by understanding as to meaning of contract; how considered. *Phelps*, 109/115, 34 S. E. 210.

To defraud, presumptive evidence of, may be rebutted by evidence as a whole, requiring acquittal. *Mulkey*, 1 A. 522, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284.

- To furnish liquor, inference as to. *Ayers*, 16 A. 278, 85 S. E. 201.
- To kill, circumstances authorizing inference as to. *Lovett*, 9 A. 232, 70 S. E. 989.
- Evidence sufficient to show intentional or wanton killing by railroad train. *Southern Ry. Co.*, 7 A. 244, 66 S. E. 627.
- Interest of prosecutor not witness, irrelevant. *Hart*, 14 A. 365, 80 S. E. 909.
- Intoxication of one accused of homicide, when arrested soon after the killing; admissibility of evidence as to. *Mulligan*, 18 A. 465, 471, 89 S. E. 541.
- Drinking at time of alleged assault, relevant, to show assailant's reckless condition of mind. *Roberts*, 9 A. 810-11, 72 S. E. 287.
- On highway. Admissibility of testimony as to conduct near highway. *Davis*, 9 A. 431, 71 S. E. 603.
- On highway. Evidence as to defendant's habitual use of intoxicants, and their effect on him, admitted as tending to show the cause of his condition when found lying in a highway. *Howell*, 14 A. 414, 81 S. E. 247.
- Irrelevant testimony required new trial in murder case. *Worley*, 138/336, 75 S. E. 240.
- Jealousy as to attention paid by others to woman, admissibility of evidence as to, in murder case. *Jones*, 117/325, 43 S. E. 715.
- Joint ownership of railroad and crop-per in stolen cotton; proof of allegation. *Corpus delicti* sufficient proof of. *Parker*, 23 A. 591, 99 S. E. 220.
- Judicial cognizance of meaning of "craps." *Sims*, 1 A. 776, 57 S. E. 1029.
- Of municipal ordinance taken on trial in municipal court. *Taylor*, 118/63, 44 S. E. 845.
- Knowledge of accused, shown by pointing out tools, as circumstance of guilt. *Shaw*, 102/660, 29 S. E. 477.
- Larceny. Variance not material between allegations and proof descriptive of stolen automobile. *Stewart*, 23 A. 139, 97 S. E. 871.
- Leading questions, discretion to allow. *Keller*, 102/507, 31 S. E. 92.
- Lewdness, proof of specific acts, not admitted for purpose of impeachment, when. *Black*, 119/747, 748, 47 S. E. 370.
- Of woman, how shown; admissibility of language used by her. *Fitzgerald*, 10 A. 71, 74, 75, 72 S. E. 541.
- License (U. S.), as evidence of keeping or selling liquor. *Bragg*, 15 A. 627, 84 S. E. 82; *Christian*, 9 A. 61, 76 S. E. 258; *Cassidy*, 10 A. 123, 72 S. E. 939; *Jackson*, 10 A. 143, 72 S. E. 941; *Heimer*, 16 A. 589, 85 S. E. 821.
- Burden of proof as to. *Blocker*, 12 A. 81, 76 S. E. 784; *Williams*, 12 A. 84, 76 S. E. 784; *Sims*, 12 A. 863, 77 S. E. 188; *Russell*, 12 A. 557, 77 S. E. 829.
- Conviction of failure to post, not supported by showing failure to procure. *Hewitt*, 104/742, 30 S. E. 839.
- Limitation of prosecutions: See *Criminal Law*, 1, catchwords, Limitation, Time of offense.
- Liquor discovered in illegal search of premises of accused, over his protest, testimony as to, admitted. *Duren*, 125/1, 53 S. E. 814.
- Lynching apprehended and precautions taken against, evidence as to, when immaterial on trial of issue as to guilt. *Brown*, 105/640, 31 S. E. 557.
- Marriage, proof of, by repute. *Miller*, 9 A. 827, 72 S. E. 279.
- Presumed from circumstances. *Wynne*, 17 A. 263, 86 S. E. 823.
- Motive, and cause of difficulty, relevant evidence tending to show. *Wall*, 126/86, 54 S. E. 815; *Hayes*, 126/95, 54 S. E. 809.
- Admissibility of evidence as to declarations or a line of conduct tending to show. *Roberts*, 123/148, 51 S. E. 374; *Campbell*, 123/533, 51 S. E. 644; *Green*, 125/742, 54 S. E. 724.
- Admissibility of evidence as tending to show motive or explain conduct. *Harper*, 129/772, 59 S. E. 792.
- Admissibility of life-insurance policies as tending to show. *Walker*, 137/399, 73 S. E. 368.

Admissibility of testimony as tending to show, on trial for abortion. *Sullivan*, 121/183, 48 S. E. 949; *Barrow*, 121/187, 48 S. E. 950.

Proof of former quarrels between the parties, admissible, in assault case. *Smallwood*, 9 A. 300, 70 S. E. 1124.

Sayings and doings of accused relevant on motive and scheme. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Evidence admissible on question of. *Rawlins*, 124/32, 52 S. E. 1. Proof of, not necessary to support presumption of malice in homicide. *Campbell*, 124/432, 52 S. E. 914.

Evidence insufficient as to, in arson case. *Matthews*, 10 A. 302, 73 S. E. 404.

For desiring the crime committed, and attempt to induce another to commit it, proof of, admitted. *Howard*, 109/137, 34 S. E. 330.

For embezzlement, not shown by admissions showing need for money, after it was committed. *Haupt*, 108/62, 33 S. E. 829.

For homicide, admissibility of testimony as to. *Johnson*, 128/71, 57 S. E. 84; *Frank*, 141/244, 80 S. E. 1016; *Coleman*, 141/736, 82 S. E. 228.

For killing may be illustrated by facts subsequent thereto. *Hoxie*, 114/19, 39 S. E. 944. Indicated by condition of body. *Robinson*, 114/56, 39 S. E. 862.

How illustrated by statements of accused. When declaration of deceased not admitted to show. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Not illustrated by false representations made more than two months after alleged offense of cheating and swindling. *Livingston*, 17 A. 136, 86 S. E. 449.

Of accused, his wife's life being involved, indicated by his addresses to other female. *Shaw*, 102/661, 29 S. E. 477.

Of accused, illustrated by pending indictment against him. *Lindsey*, 145/11, 88 S. E. 202. By his prior exhibition of anger toward the decedent. *Boone*, 145/37, 38, 88 S. E. 558.

To be established by proof of facts, not by conclusion of witness. *Sims*, 144/90, 86 S. E. 230.

Of party to affray, how proved. *Robinson*, 118/198, 44 S. E. 985.

Of prosecutor; admissibility of his sayings, etc., as tending to show motive. *McCullough*, 11 A. 612, 76 S. E. 393.

Of prosecutor, irrelevant testimony as to. *Sheffield*, 18 A. 697, 90 S. E. 356.

Of prosecutor who was not a witness, irrelevant. *Hart*, 14 A. 365, 80 S. E. 909.

Of slayer, testimony of prior matters and conduct held admissible to show. *Lindsey*, 145/9, 88 S. E. 202; *Boone*, 145/37, 38, 88 S. E. 558. See *Lampkin*, 145/40, 88 S. E. 563.

What testimony admissible to show. *Johnson*, 130/22, 60 S. E. 158; *Moore*, 130/322, 60 S. E. 544; *Burley*, 130/343, 60 S. E. 1006; *Smith*, 148/467, 96 S. E. 1042.

Murder, admissibility of dying declarations. *McMillan*, 128/25, 57 S. E. 309.

Admissibility of correspondence of tracks, etc., as part of res gestæ. *Thomas*, 143/268, 84 S. E. 587.

Admissibility of evidence as to jealousy of attentions to woman, as motive for. *Jones*, 117/325, 43 S. E. 715.

Name of witness not indorsed on indictment, and his not having testified before grand jury, no reason for excluding him. *Taylor*, 138/826, 76 S. E. 347.

Allegation that "Anna Miller" was mother of bastard held supported by proof that this was her maiden name and she was known by it, although after marriage she was known also as "Anna Edwards." *Pittman*, 22 A. 255, 95 S. E. 940.

Assault on "Rose Scalf" alleged, proof that true name of person assaulted was "Rose Gilreath" but that

she was generally known by both names, sufficient. *Hainey*, 107/711, 33 S. E. 418.

Newly discovered evidence as ground for new trial. *Dill*, 106/684, 32 S. E. 660; *Carr*, 106/737, 32 S. E. 844; *Milam*, 108/30, 33 S. E. 818; *Brooks*, 108/47, 33 S. E. 812; *Malone*, 116/272, 42 S. E. 468; *Somers*, 116/535, 42 S. E. 779; *Hatcher*, 116/617, 42 S. E. 1018.

Merely impeaching, or of insufficient importance, no ground for new trial. *Harris*, *Pitts*, 114/35, 39 S. E. 928. 873; *Davis*, 114/104, 39 S. E. 906; *Moore*, 114/256, 40 S. E. 295. Aliter: not merely cumulative, and productive of different result. *Fellows*, 114/233, 39 S. E. 885.

Of codefendant, a convict, whose character is not vouched for, disregarded. *Herndon*, 110/313, 35 S. E. 154.

New trial not granted for error in admitting testimony, where conviction required. *Haupt*, 108/60, 33 S. E. 829.

Oath, administration of, to witness by attorney, proper. *Sikes*, 105/593, 31 S. E. 567.

Child's understanding of nature of, not shown by answers here. *Miller*, 109/512, 35 S. E. 152.

Not administered to witness (grand juror) before grand jury; objection too late here. *Mixon*, 121/145, 48 S. E. 966.

Of witness before grand jury. *Switzer*, 7 A. 7, 65 S. E. 1079; *Lennard*, 104/546, 30 S. E. 780.

Occupation unlawful, shown by a single transaction. *Fleming*, 21 A. 797, 95 S. E. 271.

Officer's illegal conduct in obtaining evidence, as affecting its admissibility. *Underwood*, 13 A. 206, 78 S. E. 1103.

Opinion of expert, derived from books, receivable. *Boswell*, 114/40, 39 S. E. 897.

Of medical expert, that blow on head came from rear; and of any witness that instrument examined is deadly weapon *Perry*, 110/234, 36 S. E. 781.

Of witness, that wound was made by discharge of shell of certain kind, when admissible. *Byrd*, 142/633, 83 S. E. 513, 54 L. R. A. (N. S.) 1143.

That the time had come for the accused "to either run or fight," not admitted in evidence. *Lowman*, 109/501, 34 S. E. 1019.

Order of introducing testimony, discretion as to. *Cooper*, 103/63, 29 S. E. 439, 68 Am. St. R. 77.

Proof of conspiracy should precede proof of declarations of conspirator; but admitting latter first was not ground for new trial. *McDaniel*, 103/270, 30 S. E. 29.

Other acts than that charged, admissibility of evidence as to. *Carter*, 15 A. 343, 83 S. E. 153; *Wilensky*, 15 A. 860, 83 S. E. 276; *Reddick*, 15 A. 439, 83 S. E. 675; *Saffold*, 11 A. 329, 75 S. E. 338; *Mangham*, 11 A. 428, 75 S. E. 508; *McCrory*, 11 A. 788, 76 S. E. 163; *Wyatt*, 16 A. 817, 81 S. E. 802. Misdemeanors of kind charged. *Autrey*, 23 A. 764, 99 S. E. 389.

Error in admitting testimony as to, harmless. *Griffin*, 15 A. 552, 83 S. E. 871; *Smith*, 15 A. 714, 84 S. E. 159.

Other crime of same kind as that charged, rule as to inadmissibility of proof of, and exception to the rule; when admissible to illustrate intent. *Lee*, 8 A. 413, 69 S. E. 310; *McDuffie*, 17 A. 343, 86 S. E. 821.

Inadmissible testimony as to. *Webb*, 7 A. 37, 66 S. E. 27. Other theft than that charged, in same building and on same occasion, admissible testimony as to. *Hall*, 7 A. 120, 66 S. E. 390.

Sales of liquor, admissible to show keeping on hand, when. *Holland*, 9 A. 834, 72 S. E. 290.

Exceptions to rule as to inadmissibility of evidence. *Frank*, 141/244, 80 S. E. 1016. See *Hart*, 141/672, 81 S. E. 1108.

Inadmissible testimony as to. *Holmes*, 12 A. 359, 77 S. E. 187; *Cooper*, 13 A. 697, 79 S. E. 908; *Alsbrook*, 126/100, 54 S. E. 805.

- Admissibility of evidence as to. Cawthon**, 119/396, 46 S. E. 897; **Clarke**, 5 A. 95, 62 S. E. 663. **Effect of evidence as to former criminal transaction. Taylor**, 5 A. 237, 62 S. E. 1048; **Denham**, 5 A. 303, 63 S. E. 62; **Sullivan**, 121/186, 48 S. E. 949; **Griffin**, 18 A. 462, 89 S. E. 537; **Bates**, 18 A. 718, 719, 90 S. E. 481; **Ray**, 4 A. 70, 60 S. E. 816; **Thompson**, 4 A. 652, 62 S. E. 99; **Gunter**, 19 A. 772, 775, 92 S. E. 314; **Goldberg**, 20 A. 163, 92 S. E. 957; **Lucas**, 146/315, 323, 91 S. E. 72; **Martin**, 10 A. 797, 74 S. E. 304. **Possession of other stolen property. Ib.**
- Other thefts than that charged, error in admitting evidence as to. Hawkins**, 6 A. 109, 64 S. E. 289. **Rule as to inadmissibility of other offenses or transactions than that for which defendant is being tried, discussed. Robinson**, 6 A. 711, 65 S. E. 792.
- Ownership in one, not shown by proof of joint purchase by him and another, and possession by him and a third. Riley**, 1 A. 651, 57 S. E. 1031; **Southern Express Co.**, 1 A. 790, 58 S. E. 67.
- Insufficient evidence on question of. Lee**, 120/194, 195, 47 S. E. 545; **Grant**, 120/200, 47 S. E. 524. **Sufficient, that cotton had been raised by the family, whose head sold it and received the proceeds. Johnson**, 120/509, 48 S. E. 199.
- Packages, carrying and possession of, as tending to show keeping for sale. Vittillard**, 20 A. 84, 92 S. E. 554.
- Pain, complaints of, by accused who claimed to have been choked, etc., competent testimony. Powell**, 101/10, 29 S. E. 309, 65 Am. St. R. 277.
- Paper in defendant's possession, production not compellable; parol proof of contents admissible. Kinsey**, 12 A. 422, 77 S. E. 369; **Sellers**, 12 A. 687, 78 S. E. 196.
- Parol proof of crime, to impeach witness, when not admitted. Green**, 125/742, 54 S. E. 724.
- Past offense, testimony of, when admissible. Yates**, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620.
- Physical and mental condition of accused at time of homicide does not let in testimony of how long he will probably live. Bullard**, 127/289, 56 S. E. 429.
- Physical condition and relative size of parties to assault; consideration not required by evidence. Folds**, 23 A. 147, 97 S. E. 872.
- Physical laws in conflict with testimony, effect of. Patton**, 117/230, 43 S. E. 533.
- Pistol ball, size of, admissibility of testimony as to. Garner**, 6 A. 788, 65 S. E. 842.
- Pistol cartridges proof as to, held not sufficient to connect them with accused. Nolan**, 14 A. 824, 827, 82 S. E. 377.
- Carried without license; evidence making prima facie case; burden on accused to show license. Green**, 23 A. 519, 98 S. E. 553.
- Discovered by illegal arrest and search. Underwood**, 13 A. 210, 78 S. E. 1103.
- Discovered on person while executing possessory warrant, admissible evidence against him on charge of carrying concealed weapon. Hill**, 8 A. 77, 68 S. E. 614.
- Plan, practice, scheme, or system of criminal acts, relevancy of, as evidence. Frank**, 141/243, 80 S. E. 314.
- Positive and negative testimony, charge as to, criticised. Kimbrough**, 101/583, 29 S. E. 89.
- Application of rules as to. Welborn**, 116/523, 42 S. E. 773.
- Qualifications of rule as to. Not applicable where two witnesses with equal opportunity for observation directly contradict each other. Wood**, 1 A. 684, 58 S. E. 271; **Phillips**, 1 A. 687, 57 S. E. 1079.
- Rule as to probative value of, not applied where positive testimony of guilt is met by proof of alibi and impeaching testimony. Atkinson**, 112/411, 37 S. E. 747.

Evidence positive, of innocence, when to be preferred to negative, of guilt. *Jacobs*, 1 A. 519, 57 S. E. 1063.

Possession of bottles and jugs, when relevant and when not, on trial for selling liquor. *Alexander*, 7 A. 90, 66 S. E. 274.

Of bottles, as circumstance to show unlawful sale of liquor. *Craig*, 9 A. 233, 70 S. E. 974.

Of cards or money, when evidence of gaming. *Griffin*, 5 A. 43, 62 S. E. 685.

Of goods by accused, like those delivered on forged order, when insufficient to authorize conviction. *McCombs*, 109/496, 34 S. E. 1021.

Of goods, insufficient as basis of conviction of larceny here. *Wilson*, 5 A. 228, 62 S. E. 1003; *Davis*, 5 A. 602, 63 S. E. 597.

Of goods other than those described in indictment, but taken from same place, proper evidence on trial for burglary. *Walker*, 5 A. 430, 63 S. E. 534.

Of missing goods, as circumstance in burglary case. *Thomas*, 8 A. 95, 68 S. E. 522; *Gibbs*, 8 A. 107, 68 S. E. 742. Articles taken from accused and his brother, properly received in evidence; identity a question for jury. *Watts*, 8 A. 205, 68 S. E. 863.

Of missing hogs, with earmarks changed, and unsatisfactory explanation, sufficient corroboration of confession of hog-stealing. *Cook*, 9 A. 212, 70 S. E. 1019.

Of other stolen articles, with property described in indictment; no error in allowing proof of, on trial for larceny. *Martin*, 10 A. 795, 74 S. E. 304.

Of pistol, as circumstance, in homicide case. *Garner*, 6 A. 789, 65 S. E. 842.

Of stolen goods, as circumstance, in burglary case. *Peterson*, 6 A. 491, 65 S. E. 311. Effect of equivocal statement as to. *Wright*, 6 A. 772, 65 S. E. 806.

Of stolen goods, inference from, weak, in view of time when discovered, etc. Newly discovered evidence as to

prior possession by another required new trial. *Howell*, 5 A. 614, 63 S. E. 600.

Of stolen goods, shown by circumstantial evidence. *Walker*, 5 A. 430, 63 S. E. 534.

Explained, and other evidence insufficient to warrant conviction. *Williams*, 125/268, 54 S. E. 166.

By minor, facts not authorizing charge based on hypothesis of. *Sparks*, 111/830, 35 S. E. 654.

Of stolen property, as a circumstance to show guilt. *Turner*, 111/217, 36 S. E. 686; *Sparks*, 111/830, 35 S. E. 654; *Calloway*, 111/832, 36 S. E. 63; *McElroy*, 125/37, 53 S. E. 759; *Owens*, 119/304, 46 S. E. 433; *Scott*, 119/425, 46 S. E. 637; *Jordan*, 119/444, 46 S. E. 679; *Williams*, 119/564, 46 S. E. 837.

Of stolen property, burden of proof as to. *Wiley*, 3 A. 120, 59 S. E. 438.

Of stolen property held by woman with whom accused was intimate, when admissible. *Clay*, 122/136, 50 S. E. 56. Presumption from, in burglary. *Scott*, 122/139, 50 S. E. 49.

Of stolen property. Money not identified as money stolen. *Lawson*, 21 A. 140, 94 S. E. 52.

Of stolen property, not satisfactorily explained, conviction of larceny upheld. *Hudson*, 121/147, 48 S. E. 903; *Bone*, 121/147, 48 S. E. 986; *Stafford*, 121/169, 48 S. E. 903.

Of things tending to show violation of liquor law. *Vittillard*, 20 A. 84, 92 S. E. 554.

Of whisky in bottles holding less than a quart, presumption from. *Gallagher*, 20 A. 156, 92 S. E. 949.

Presumption raised, of guilt, is of fact, not of law. *Holliday*, 23 A. 400, 98 S. E. 386.

Satisfactorily explained by contradicted testimony, conviction of larceny set aside. *Peeples*, 5 A. 706, 63 S. E. 719; *Brooks*, 21 A. 661, 94 S. E. 810.

Whether satisfactorily explained, jury alone determines. *Holliday*, 23 A. 400, 98 S. E. 386; *Jester*, 23 A. 132, 97 S. E. 563.

Wife living with husband, evidence against. *Craig*, 9 A. 233, 70 S. E. 974.

Preponderance of evidence, law of, not applicable in criminal cases. *Mill*, 2 A. 398, 58 S. E. 673.

Charge on, not proper for criminal case, cured by subsequent instruction. *McLeod*, 128/17, 57 S. E. 83.

Charge as to, not proper for criminal case, but not require reversal here. *Jackson*, 125/102, 53 S. E. 607; *Williams*, 125/302, 54 S. E. 108.

Defense, not required to be made by. *Boyd*, 126/341, 71 S. E. 416.

On issue of guilt. *Gale*, 135/351, 69 S. E. 537.

Ordinarily is not aptly referable to issue of guilt or innocence. *Pressley*, 132/65, 63 S. E. 784.

Presence of accused at or near place and time of offense, circumstance of guilt. *Sanders*, 118/329, 45 S. E. 365. Compare *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33.

Of deceased at place of homicide, testimony relevant to explain that he had been requested to do something there. *Patterson*, 134/264, 67 S. E. 816; *Ricketson*, 134/306, 67 S. E. 881.

Of witness waived, and affidavit introduced; error in charge of court as to effect of testimony. *Parker*, 11 A. 252, 75 S. E. 437.

Presumption against party failing to produce evidence within his reach; rule as to, should not be given to jury in criminal case. *Wilson*, 8 A. 816, 70 S. E. 193; *Whitley*, 14 A. 577, 81 S. E. 797; *Jones*, 14 A. 811, 82 S. E. 470; *Williamson*, 9 A. 442, 71 S. E. 509.

Not applied to accused. *Mills*, 133/155, 65 S. E. 368. Not applied to State, when. *Harper*, 129/770, 774, 59 S. E. 792.

Of guilt does not arise against accused who omits to call an accessible

witness and relies on his own statement. *Long*, 126/109, 54 S. E. 906.

From failure to produce witness, when not applied. *Harper*, 129/770, 774, 59 S. E. 792. Failure to introduce testimony of little girl, no presumption from. *Knox*, 112/373, 37 S. E. 416.

Against accused, where apparatus for making whisky was found on his premises. *Carter*, 21 A. 493, 94 S. E. 630.

Charge that the presumption must be overcome by proof of guilt beyond a reasonable doubt "of the law" was subject to exception. *Gardner*, 17 A. 410, 87 S. E. 150.

From possession of stolen goods, no error in charge of court as to. *Latty*, 19 A. 621, 91 S. E. 942.

From unlawful act, as to criminal intent; no harm in charge of court as to. *Brundage*, 7 A. 728, 67 S. E. 1051.

From use of weapon. *McLeod*, 128/17, 57 S. E. 83; *Possey*, 22 A. 97, 95 S. E. 325; *Harrell*, 22 A. 104, 95 S. E. 537.

Indictment aided by. *Leps*, 120/140, 47 S. E. 572.

Of fraud on part of director of insolvent bank. *Stapleton*, 19 A. 37, 90 S. E. 1029.

Of fraudulent intent. Statute creating, constitutional. *Griffin*, 15 A. 520, 83 S. E. 891.

Of guilt, from recent possession of stolen goods, not raised by law. Jury may infer guilt. *Lewis*, 120/508, 48 S. E. 227.

Of guilt, rebuttal of, by proof of good character. *Mitchell*, 103/20, 29 S. E. 435.

Of guilt, or of innocence. See **Charge to Jury**.

Of innocence of accused. *Pride*, 133/445, 66 S. E. 259.

Of innocence, and of malice. *Dorsey*, 110/332, 333, 35 S. E. 651. How overcome. *McClurg*, 2 A. 624, 58 S. E. 1064; *Hodge*, 116/852, 43 S. E. 255.

Of innocence, discussed, as bearing on question as to criminal intent or mental responsibility. **Wilson**, 9 A. 286, 70 S. E. 1128.

Of innocence, discussed in connection with presumption of knowledge of law. **Hayes**, 13 A. 650, 651, 79 S. E. 761.

Of innocence. Error in not charging jury as to. **Thurman**, 14 A. 543, 81 S. E. 796; **Townsend**, 14 A. 757, 82 S. E. 253. Charge that defendant enters trial with "the presumption of law in his favor," not sufficient. **Thurman**, 14 A. 543, 81 S. E. 796.

Of innocence, failure to charge jury as to, was error, though no charge requested and though court charged jury as to burden on State to show guilt beyond a reasonable doubt. **Butts**, 13 A. 274, 79 S. E. 87; **Reddick**, 11 A. 150, 74 S. E. 901.

Of innocence, instructions on, not erroneous. **Clay**, 4 A. 147, 60 S. E. 1028.

Of innocence; no error in charging jury that it remains until end of trial unless overcome by proof. **Richardson**, 8 A. 26, 68 S. E. 518.

Of innocence of crime overcomes presumption of former marriage, arising from habit and repute. **Roberts**, 114/590, 592, 40 S. E. 702.

Of innocence, omission of proper charge as to; ground for reversal. **Gardner**, 17 A. 410, 87 S. E. 150.

Of innocence overcome (concealed weapon). **Reese**, 3 A. 533, 60 S. E. 122.

Of innocence and reasonable doubt of guilt. **McBeth**, 122/737, 50 S. E. 931; **Butler**, 142/286, 82 S. E. 654.

Of innocence, descriptive averments construed in light of. **Melvin**, 120/490, 491, 48 S. E. 198. Circumstantial evidence aided by. **Sikes**, 120/494, 48 S. E. 153.

Of innocence of accused; effect of law as to raising and repelling presumption of fraud. **Griffin**, 142/637, 83 S. E. 540, L. R. A. 1915C, 716, Ann. Cas. 1916C, 80.

Of innocence remains through trial; not after conviction. **Vanderford**, 126/70, 54 S. E. 822, 9 Ann. Cas. 617. Tardy instruction to jury as to, when no ground for reversal. **Perdue**, 126/113, 54 S. E. 820.

Of intending consequence of act. **Hunter**, 147/823, 95 S. E. 668.

Of intent to kill; none where no death. **Hunter**, 10 A. 831, 74 S. E. 553.

Of intent to kill, not exist where the crime charged is assault with intent to murder. **Wimberly**, 12 A. 540, 77 S. E. 879.

Of law, not created by recent possession of stolen property, not satisfactorily explained. **Gravitt**, 114/841, 40 S. E. 1003, 88 Am. St. R. 63.

Possession unexplained, a circumstance to be considered by jury, but does not as matter of law raise presumption of guilt. **Kinard**, 19 A. 624, 91 S. E. 941.

Of malice, from killing. **Bradley**, 128/21, 57 S. E. 237.

Of malice from killing; charge of court as to, harmless to one convicted of manslaughter. **Driskell**, 20 A. 174, 92 S. E. 1007.

Of malice, judge charging as to burden of rebutting, should charge as to rebutting by evidence introduced by State. **Branch**, 5 A. 651, 63 S. E. 714.

Of malice, on proof of homicide, error in charging as to, where the killing was shown by an admission which justified the act. **Wall**, 5 A. 306, 63 S. E. 27.

Of malice, exclusion of evidence to rebut, harmless error, where conviction is of manslaughter and not murder. **Carter**, 2 A. 254, 58 S. E. 532.

Of malice, on proof of homicide; proper charge to jury as to. **Griggs**, 17 A. 302, 86 S. E. 726.

Prima facie presumption as to knowledge; no prejudicial error in charge of court as to. **Cammon**, 20 A. 175, 92 S. E. 957.

Court not required to charge jury, when not requested, that no presump-

tion against the accused arises from indictment. **Brooks**, 19 A. 3, 90 S. E. 989.

Of law in criminal cases. **Thurman**, 14 A. 543, 81 S. E. 796.

Sufficient charge as to presumption of innocence. **Innes**, 20 A. 719, 93 S. E. 229.

That burning of house was accidental. **West**, 6 A. 105, 64 S. E. 130; **Hurt**, 18 A. 110, 88 S. E. 901.

Use of the word "indulges," not error in charge to jury on the presumption of innocence "which the law indulges in his favor," etc. **Josey**, 20 A. 85, 92 S. E. 763.

Whether new trial required by refusal to charge jury expressly as to presumption, where the court charged as to the burden on the State to show guilt beyond a reasonable doubt. **Webb**, 11 A. 850, 75 S. E. 815; 76 S. E. 990.

Presumptive evidence of fraudulent intent, constitutional legislation declaring proof of certain fact to be. **Youmans**, 7 A. 110, 66 S. E. 383; **Wilson**, 11 A. 449, 75 S. E. 671; **Vance**, 128/661, 57 S. E. 889.

Of fraudulent intent, error in charge as to effect of, in requiring defendant to prove innocence. **Fuller**, 10 A. 117, 72 S. E. 718.

Previous conviction of different offense, when State not allowed to prove. **Gay**, 115/204, 41 S. E. 685.

Previous difficulty, evidence of, admitted. **Coleman**, 141/736, 82 S. E. 228.

Between accused and person he slew, relevant as testimony. **Cason**, 148/477, 97 S. E. 74. Not admissible in evidence, when. **Daniel**, 103/202, 29 S. E. 767.

Prior attempts to commit the crime charged, admissibility of proof as to. **Sullivan**, 121/186, 48 S. E. 949.

Prior conduct, admissibility of, as tending to show act in question. **Lipham**, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Privileged communication, admission of homicide by husband to wife, overheard

by witness, is not. **Williams**, 139/591, 77 S. E. 818.

Proceedings proved how. **Anglin**, 14 A. 566, 81 S. E. 804.

Production of evidence for use by grand jury, summary order for; and judgment of contempt by refusal. **Blitch**, 145/882, 90 S. E. 42.

Profane language in presence of female; no substantial variance of allegation and proof. **Cleveland**, 22 A. 124, 95 S. E. 540.

In female's presence, proof admissible, that soon after the alleged profanity she testified to defendant's good character and friendship for her. **Fountain**, 7 A. 559, 67 S. E. 218. Sufficiency of provocation for words, a jury question. **Dowling**, 7 A. 613, 67 S. E. 697.

Question to witness, whether or not designated words were used, not leading. **Fountain**, 7 A. 559, 67 S. E. 218.

Proof need not cover negative of statutory exception, where indictment charges complete offense in language of other code section. **Hicks**, 108/749, 32 S. E. 665. Evidence of one of prohibited acts charged supports conviction. **Walker**, 118/772, 45 S. E. 621; **Thomas**, 118/775, 45 S. E. 622; **Cody**, 118/784, 45 S. E. 622.

Prosecutor's explanation of conduct, hearsay evidence of, when not prejudicial. **Hamilton**, 143/265, 84 S. E. 583.

Motive, error in not allowing accused to introduce testimony as to. **Billings**, 8 A. 673, 70 S. E. 36.

Motive, irrelevant testimony as to. **Sheffield**, 18 A. 697, 90 S. E. 356.

Question on cross-examination, as to whether the witness was paramour of party, when allowed. **Brown**, 119/572, 46 S. E. 833.

By judge to accused, irrelevant and inappropriate, not cause new trial, when not asked in hearing of jurors. **Cochran**, 113/726, 39 S. E. 332.

Relevancy of, not apparent, purpose not stated, testimony ruled out. **Keller**, 102/506, 31 S. E. 92.

Race and social status, difference in, on question of intent to ravish. *Dorsey*, 108/477, 34 S. E. 135.

Difference in, between negro man and white woman, as affecting question of intent, where assault to rape is charged. *McCullough*, 11 A. 612, 76 S. E. 393; *Fite*, 11 A. 691, 76 S. E. 397; *McCullough*, 10 A. 403, 73 S. E. 546.

Not relevant on trial for rape, where no evidence of difference therein. *Washington*, 138/370, 75 S. E. 253.

Railroad-car, throwing missile into; conviction set aside on account of new evidence. *Carson*, 20 A. 82, 92 S. E. 549.

Reasonable and moral certainty of guilt, charge of court as to, not error. *Robinson*, 128/258, 57 S. E. 315; *Field*, 126/574, 55 S. E. 502.

Reasonable doubt and reasonable fear of felony, as defense of homicide. *Strickland*, 133/76, 65 S. E. 148; *Allen*, 133/261, 65 S. E. 431; *Brantley*, 133/264, 65 S. E. 426.

As to alibi. *Lowry*, 6 A. 543, 65 S. E. 353. As to existence of fact set up by defendant which would be good defense, requires acquittal, when. *Ib.* 541; *Blandon*, 6 A. 782, 65 S. E. 842.

As to criminal intent, where defense is insanity. *Wilson*, 9 A. 286, 70 S. E. 1128.

As to guilt, whether jury should have, not a question for appellate court, where there is any evidence to support verdict. *Hunt*, 8 A. 374, 377, 69 S. E. 42.

As ground for setting aside conviction. *Patton*, 117/234, 237, 43 S. E. 533.

As to admissibility of confession does not necessarily exclude it. As to guilt of accused, and as to "all the phases of the case," requests for charges not approved here. *Price*, 114/856, 40 S. E. 1015.

As to existence of particular fact, and proper inferences therefrom. *Campbell*, 144/225, 87 S. E. 277.

Charge as to. *Battle*, 103/53, 29 S. E. 491; *Barnes*, 113/716, 39 S. E.

488. Proper charge as to, in connection with charge on alibi. *Cochran*, 113/726, 39 S. E. 332.

Charges on, considered and criticised. *Bone*, 102/387, 30 S. E. 845; *Shaw*, 102/660, 29 S. E. 477.

Defined. *Jordan*, 130/406, 60 S. E. 1063; *Dickens*, 137/523, 527, 73 S. E. 826; *Chancey*, 145/12, 88 S. E. 205; *Lampkin*, 145/40, 88 S. E. 563; *Butts*, 13 A. 274, 275, 79 S. E. 87. No error in definition of. *Arnold*, 131/494, 62 S. E. 806. Not defined in charge of court, no error. *Nash*, 126/549, 55 S. E. 405.

Effect of. Mental unrest is a point where accused may stop, but which State must pass. *Cuthbert*, 3 A. 600, 605, 60 S. E. 322. As to alibi. *Smith*, 3 A. 803, 61 S. E. 737.

Evidence must show guilt beyond. *Brown*, 141/5, 80 S. E. 320; *Hart*, 141/672, 81 S. E. 1108; *Rhodes*, 144/837, 88 S. E. 196.

Evidence not excluding, conviction set aside. *Jordan*, 124/780, 53 S. E. 331; *Horseford*, 124/786, 53 S. E. 322.

Immaterial error in charge of court as to. *Johnson*, 4 A. 60, 60 S. E. 813. Exceptions to charge, not meritorious. *Clay*, 4 A. 147, 60 S. E. 1028; *Crawford*, 4 A. 801, 62 S. E. 501. As to alibi. *Smith*, 4 A. 807, 61 S. E. 737.

Law as to, given in one part of charge to jury, omission to give it in immediate connection with other parts, not error. *Carter*, 121/360, 49 S. E. 280.

Law of, charged once as to whole case, sufficient. *Goodin*, 126/560, 55 S. E. 503; *Cress*, 126/564, 55 S. E. 491; *Fargerson*, 128/27, 57 S. E. 101; *McLeroy*, 125/243, 54 S. E. 125; *McGirt*, 125/269, 54 S. E. 171; *Davis*, 125/299, 54 S. E. 126. Charge on, considered. *Cole*, 125/276, 53 S. E. 958. Of guilt. *Harris*, 1 A. 136, 57 S. E. 937; *Bass*, 1 A. 729, 57 S. E. 1054. Reasonable doubt (not any doubt) of guilt furnishes ground for acquittal. *Hunter*, 133/78, 65 S. E.

154; *Brantley*, 133/264, 65 S. E. 426.

Of guilt, and whether of murder or manslaughter. *Pressley*, 132/64, 63 S. E. 784. May be raised by testimony of alibi. *Raysor*, 132/237, 63 S. E. 786. Definition unnecessary. *Jackson*, 132/571, 64 S. E. 656.

Of guilt, a sufficient charge to jury on. *Nance*, 126/95, 54 S. E. 932.

Of guilt, question of, submitted to jury as to whole case. *Tolbert*, 127/827, 56 S. E. 1004.

Of innocence need not prevent acquittal. *Williams*, 116/525, 42 S. E. 745.

Whether homicide was voluntary or accidental. *Woods*, 137/85, 72 S. E. 908.

Refusal to give charge requested as to, proper. *West*, 119/119, 45 S. E. 973. Proper charge as to. *Barnard*, 119/436, 46 S. E. 644.

Reason for search, admissibility of testimony as to. *Hall*, 22 A. 112, 95 S. E. 936.

Rebutting evidence not admitted after defense closed, discretion not abused. *Cooper*, 103/63, 29 S. E. 439, 68 Am. St. R. 77.

Redirect examination, testimony on, not in rebuttal, if pertinent, allowed. *Kidd*, 101/528, 28 S. E. 990.

Reputation, evidence of, when not admissible to prove adultery. *Bishop*, 124/294, 52 S. E. 743. When admissible. *Sutton*, 124/815, 53 S. E. 381.

Effect of evidence as to, in prosecution for keeping lewd house. *Smith*, 13 A. 241, 79 S. E. 51.

Proof of, as tending to show criminal knowledge of proprietor of house, as to lewd practices in it. *Fitzgerald*, 10 A. 71, 72 S. E. 541. Not alone sufficient to convict. *Watson*, 10 A. 794, 74 S. E. 89.

Special presentment for keeping gaming-house admissible to establish. *Rivers*, 118/42, 44 S. E. 859.

Requisition, refusal to return without honoring of, admissible in evidence. *Johnson*, 120/135, 47 S. E. 510.

Res gestæ, declarations of accused, in a half-minute after killing, when not admitted as. *Thornton*, 107/683, 33 S. E. 673.

Conduct constituting part of res gestæ of homicide. *Dunn*, 16 A. 9, 84 S. E. 488.

Declarations of alleged principal, when not admissible against alleged accessory, as. *Howard*, 109/137, 34 S. E. 330.

Difficulty between accused and third person just before and connected with homicide as part of. *Helms*, 138/829, 76 S. E. 353.

Of battery. *Moody*, 120/868, 48 S. E. 340. Of homicide. *Taylor*, 120/857, 48 S. E. 361.

Of homicide. *Arnold*, 131/494, 62 S. E. 806.

Of homicide; acts and circumstances forming part or continuation of main transaction. *Floyd*, 143/286, 84 S. E. 971.

Of homicide; admissibility of declarations of person killed. *Crumley*, 23 A. 312, 98 S. E. 230.

Of homicide; sayings of deceased a few minutes after he was shot. *Milam*, 108/30, 33 S. E. 818.

Of homicide; shooting of other woman immediately before shooting wife of accused. *Lampkin*, 145/40, 88 S. E. 563.

Of homicide; slayer's statement that he shot unintentionally, made less than two minutes after shooting, admissible, under circumstances here. *Darby*, 9 A. 700, 72 S. E. 182.

Of homicide, testimony admissible. *Scrutchens*, 146/189, 91 S. E. 25.

Of murder, declaration of infant was part of. *Grant*, 124/759, 53 S. E. 334.

Of shooting, admissibility of statement eight or ten minutes afterward. *Jefferson*, 137/383, 73 S. E. 499.

Saying of father of alleged victim in rape case, when admissible as. *Merritt*, 107/675, 34 S. E. 361.

Slayer's statement "less than five minutes" after homicide, not admitted as. *Park*, 126/576, 55 S. E. 489.

Slayer's statement on starting to place of homicide, admitted as. His statement five minutes after homicide not admitted. *Warrick*, 125/133, 139. 53 S. E. 1027.

Statement after homicide as part of. *Caesar*, 127/716, 57 S. E. 66.

Statement of deceased "soon" after shot, not admissible as, here: showing as to time, insufficient. *Sutherland*, 121/190, 48 S. E. 915.

Statements by person burned. *Walker*, 137/398, 73 S. E. 368.

Statements of decedent before homicide were no part of. *Roberts*, 145/78, 88 S. E. 559.

What admissible as part of, in dying declaration. *Bush*, 109/123, 34 S. E. 298.

Residence, circumstances showing place of. *Hathaway*, 14 A. 418, 81 S. E. 260.

Riot; declarations of persons in crowd, other than the accused, when admitted in evidence. *Green*, 109/544, 35 S. E. 97.

Robbery. Error harmless in admitting in evidence whisky found on the person of the accused. *Stephens*, 16 A. 144, 84 S. E. 560.

Running away, circumstance tending to show guilt. *Gantz*, 18 A. 154, 88 S. E. 993.

Sale unlawful; admissibility of declaration of accused. *Richter*, 4 A. 274, 61 S. E. 147.

Testimony that one going into house said whisky could be bought there, not objectionable as hearsay, when. *Carswell*, 7 A. 198, 66 S. E. 488.

Sayings and doings of accused, relevant on his motive and scheme. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Inadmissible; of prosecutor, and of owner of stolen property. *Green*, 112/638, 37 S. E. 885.

Search and seizure of pistol under unlawful arrest, will not furnish legal evidence to convict of carrying concealed weapon. *Hammock*, 1 A. 126, 58 S. E. 66.

Of person unlawful, evidence procured by, not admissible; aliter as to

search and seizure of property. *Smith*, 3 A. 326, 59 S. E. 934.

Admissibility of testimony as to reason for search. *Hall*, 22 A. 112, 95 S. E. 936.

Admissibility of incriminating evidence obtained by illegal search. *Harris*, 22 A. 795, 97 S. E. 197; *Calhoun*, 144/679, 87 S. E. 893.

Illegal, admissibility of evidence obtained by. *Holloway*, 16 A. 143, 84 S. E. 590; *Stephens*, 16 A. 144, 84 S. E. 560; *Heimer*, 16 A. 588, 85 S. E. 821. When immaterial, in view of other evidence as to circumstances showing guilt. *Akridge*, 12 A. 252, 77 S. E. 101.

Illegal; evidence not excluded as obtained by. *Leatherman*, 11 A. 756, 76 S. E. 102.

Illegal, evidence procured by, admissible. *Jackson*, 118/781, 45 S. E. 604; *Jones*, 21 A. 22, 93 S. E. 514; *Duren*, 125/1, 53 S. E. 814; *Stoker*, 23 A. 11, 97 S. E. 273; *English*, 23 A. 81, 97 S. E. 445; *Corley*, 23 A. 480, 98 S. E. 401; *Sykes*, 23 A. 447, 99 S. E. 55; *Page*, 23 A. 548, 99 S. E. 55.

No error in charging jury that the fact of illegal search would not exonerate defendant. *Duren*, 21 A. 524, 94 S. E. 902.

Illegal, of premises, evidence obtained by, admissible. *Young*, 12 A. 86, 76 S. E. 753; *Cohen*, 7 A. 5, 65 S. E. 1096; *Minor*, 7 A. 817, 68 S. E. 314.

Of person under illegal arrest, admissibility of evidence obtained by. *Byrd*, 10 A. 214, 73 S. E. 34; *Hughes*, 2 A. 29, 58 S. E. 390; *Sherman*, 2 A. 148, 58 S. E. 393; *Brookins*, 7 A. 204, 66 S. E. 398; *Jackson*, 7 A. 414, 66 S. E. 982. Objection to evidence obtained by, too late, after verdict. *Williams*, 7 A. 34, 65 S. E. 1097.

Of person, admissibility of evidence obtained by. *Brown*, 15 A. 484, 83 S. E. 890.

Of person, incriminating evidence obtained by, while executing possessory warrant, admitted. *Hill*, 8 A. 77, 68 S. E. 614.

Of person, made illegally. Evidence obtained by unlawful search of premises, admissible. *McAllister*, 17 A. 160, 86 S. E. 412; *Fanning*, 17 A. 316, 86 S. E. 731; *Lunceford*, 17 A. 415, 87 S. E. 151.

Of person or premises of one under illegal arrest, admissibility of evidence obtained by. *Davis*, 4 A. 318, 61 S. E. 404; *Glover*, 4 A. 455, 61 S. E. 862; *Croy*, 4 A. 456, 61 S. E. 848; *Tooke*, 4 A. 508, 61 S. E. 917; *Thompson*, 4 A. 649, 62 S. E. 99; *Rogers*, 4 A. 691, 62 S. E. 96; *Jones*, 4 A. 741, 62 S. E. 482; *Jenkins*, 4 A. 864, 62 S. E. 574. Verdict not set aside because based on illegal evidence not objected to at the trial. *Davis*, 4 A. 318, 61 S. E. 404.

Of person, made illegally or while the person is under illegal arrest, no reason for exclusion of evidence thereby obtained; conflict of decisions settled by answer of Supreme Court to certified questions of Court of Appeals. *Smith*, 17 A. 693, 88 S. E. 42; *Calhoun*, 17 A. 705, 88 S. E. 586; *Angry*, 17 A. 712, 88 S. E. 213.

Of person under arrest, admissibility of evidence obtained by means of; authorities discussed. *Underwood*, 13 A. 206, 78 S. E. 1103. "Third degree" methods condemned. *Ib.* 214.

Of person, under arrest, admissibility of evidence obtained by means of; cases distinguished. *Pitta*, 14 A. 283, 80 S. E. 510. See *Cooper*, 14 A. 464, 81 S. E. 364; *Scott*, 14 A. 806, 82 S. E. 376.

Of person, under arrest, evidence procured by, when admitted. *Dozier*, 107/708, 33 S. E. 418. Objection to evidence so obtained, too late after verdict. *Butler*, 14 A. 450, 81 S. E. 370.

Rule as to exclusion of evidence obtained by illegal search, not violated. *Weatherington*, 13 A. 408, 79 S. E. 240.

Of residence for liquor, admissibility of evidence obtained by. *Craig*, 9 A. 233, 70 S. E. 974.

Admissibility of evidence obtained by illegal search or seizure. *Taylor*, 5 A. 243, 62 S. E. 1048; *Warren*, 6 A. 18, 64 S. E. 111.

Illegal search or seizure, no reason for excluding evidence obtained thereby. *Hornbuckle*, 18 A. 17, 88 S. E. 748; *Brown*, 18 A. 288, 89 S. E. 342; *Pruett*, 18 A. 313, 89 S. E. 378; *Gillespie*, 18 A. 612, 89 S. E. 1088; *Brooks*, 19 A. 9, 90 S. E. 989. Question as to admissibility submitted to jury. *Holloway*, 16 A. 143, 84 S. E. 590.

Unreasonable, constitutional right to be secure from. *Walker*, 7 A. 421, 66 S. E. 984.

Sexual intercourse, admissibility of prior conduct as tending to show. *Lipham*, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 44 Ann. Cas. 495.

Circumstances not showing. *Winkles*, 4 A. 563, 61 S. E. 1128.

Prior lascivious conduct between same parties, as tending to show. *Bass*, 103/227, 29 S. E. 966.

Proved by circumstantial evidence; *Johnson*, 119/447, 46 S. E. 634. Evidence of specific acts, not admitted for purpose of impeachment, when. *Black*, 119/747, 748, 47 S. E. 370.

Sexual relations, proof as to, when admitted, to show motive for procuring abortion. *Barrow*, 121/187, 48 S. E. 950.

Shooting from the hip, habit of others as to, inadmissible to prove that accused intended to shoot from that position. *Baldwin*, 120/189, 47 S. E. 558.

Heard but not seen by witness, admissibility of testimony concerning. *Crumbly*, 141/17, 80 S. E. 281.

Presumption from, as to malice and intent to kill, when not arise. *Adams*, 125/11, 13, 53 S. E. 804. See *Shockley*, 125/778, 54 S. E. 692.

Shotgun alleged, rifle proved to be weapon used in homicide; no fatal variance. *Burney*, 22 A. 622, 97 S. E. 85.

Stenographer, duty of, to transcribe evidence in felony case, where punishment reduced to that for misdemeanor. *Williams*, 127/21, 55 S. E. 917.

Sufficiency of evidence to convict under code. *Butler*, 142/286, 82 S. E. 654.

Evidence weak and unsatisfactory; judge thought it was "probably" sufficient; refusal of new trial reversed. *Rogers*, 101/561, 28 S. E. 978.

Proper charge as to when sufficient to convict. *Johnson*, 128/71, 57 S. E. 84.

Surrender of self after homicide, admissible not as original evidence, but only in explanation or rebuttal. *Jones*, 132/340, 63 S. E. 1114.

Voluntary; accused not allowed to show. *Register*, 10 A. 623, 74 S. E. 429; *Williams*, 23 A. 129, 97 S. E. 563.

Suspicion not sufficient basis for convictions. *Williams*, 13 A. 685, 79 S. E. 763; *Henderson*, 147/134, 92 S. E. 871.

Of guilt, evidence raising, may be insufficient to convict. *Erwin*, 120/150, 47 S. E. 512.

"Third degree" methods of obtaining evidence, discussed. *Underwood*, 13 A. 214, 78 S. E. 1103.

Threats. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; *Brooks*, 134/784, 68 S. E. 504. Threat, and proposal to assassinate, insufficient evidence of guilt. *Bailey*, 104/532, 30 S. E. 817. Threats and drawing weapon, when sufficient to arouse reasonable fears. *Johnson*, 105/665, 31 S. E. 399. Threats and menaces, effect of, in connection with reasonable fears. No manslaughter from passion provoked. *Ellison*, 137/194, 73 S. E. 255. Threats, etc., coercing to commit crime. *Henderson*, 5 A. 495, 63 S. E. 535.

Admissibility of declaration in the nature of. *Sanders*, 113/270, 38 S. E. 841.

Against father of slain person, when admissible. *Rawlins*, 124/57, 52 S. E. 1. Conditional, when admissible in evidence. *Golatt*, 130/18, 60 S. E. 107.

Of accused was not admissible as explanatory of his daughter's conduct or silence. *Moose*, 145/363, 89 S. E. 335.

Of mother of accused, not in his presence, not admissible. *Owens*, 118/753, 45 S. E. 598.

Admissible as part of *res gestæ*. *Helms*, 138/826, 76 S. E. 353.

Admissibility of evidence as to. Early, 14 A. 467, 81 S. E. 385. Generally immaterial how communicated, if known to the threatened person. *Thurman*, 14 A. 543, 81 S. E. 795.

By deceased, rebuttal of evidence as to, by proof of his subsequent declarations of peaceful intent, communicated to his slayer. *Taylor*, 121/348, 49 S. E. 303.

Alone, not justify homicide, but may be considered in connection with overt act, in passing on the question of reasonable fears. *Taylor*, 121/355, 49 S. E. 303.

By deceased, uncommunicated, to accused; newly discovered evidence did not require new trial. *McMillan*, 128/25, 57 S. E. 309.

By slayer, nine days before homicide, received in evidence. *Cason*, 148/477, 97 S. E. 74.

Consideration of, in case of homicide. *Chancey*, 141/54, 80 S. E. 287.

Communicated, evidence, of, admissible on question of reasonable fears. *Taylor*, 131/769, 63 S. E. 296.

Evidence of, how received. *Perdue*, 126/112, 54 S. E. 820.

Facts tending to weaken probative force of. *Justice*, 6 A. 331, 64 S. E. 1004.

Followed by friendly feeling, of slight weight as proof of malice. *Crumley*, 5 A. 231, 233, 62 S. E. 1005.

Hearsay evidence of. *McCarty*, 23 A. 79, 97 S. E. 446.

Insufficiency of evidence as to; accused not chargeable with what his wife said in his presence, when. *Chapman*, 109/157, 34 S. E. 369.

Not to be charged on without evidence thereof. *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426.

Of accused to witness, to prevent disclosure of facts, when admissible in evidence. *Sasser*, 129/541, 59 S. E. 255.

Of deceased against accused. **Morman**, 133/76, 65 S. E. 146; **Pride**, 133/438, 66 S. E. 259. As basis of reasonable fear of felony. **Clay**, 124/795, 53 S. E. 179.

Of decedent, admissibility of, in homicide case. **Miller**, 9 A. 599, 603, 71 S. E. 1021.

Probative force of, weakened by lapse of time. **Crumley**, 5 A. 231, 62 S. E. 1005; **Taylor**, 5 A. 237.

To take life, shown by declaration of accused just before homicide. **Hill**, 148/521, 97 S. E. 442.

Uncommunicated, admissibility of testimony as to, as tending to show animus and intent of assailant. **Darby**, 144/759, 87 S. E. 1067.

Uncommunicated, inadmissible. **Nix**, 120/162, 47 S. E. 516; **Ellison**, 21 A. 259, 261, 94 S. E. 253.

Uncommunicated, of accused, three months before homicide, admitted. **Graham**, 125/48, 53 S. E. 816. Of deceased, when admissible and when not; full discussion and authorities. **Warwick**, 125/133, 53 S. E. 1027.

Uncommunicated, when admissible in evidence. **McKinney**, 119/467, 46 S. E. 719.

Uncommunicated, when admitted and how considered, on trial for homicide. **Rouse**, 135/228, 69 S. E. 180.

When admissible in dying declaration. **Bush**, 109/123, 34 S. E. 298.

Words spoken shortly before homicide, and capable of being construed as a threat to take the life of some one, admitted in evidence. **Harris**, 109/280, 34 S. E. 583.

To kill, admissibility of testimony as to. **Brown**, 141/6, 80 S. E. 320; **Coleman**, 141/736, 82 S. E. 228. Effect of evidence. **Chancey**, 141/54, 80 S. E. 287; **Humphrey**, 141/671, 81 S. E. 1034.

To kill some one, remote in time, admissibility of. **Hixon**, 130/479, 61 S. E. 14.

Time alleged as date of contract, fatal variance in proof as to. **Green**, 6 A. 324, 64 S. E. 1121.

Elapsed between offense and arrest, materiality of. **Clark**, 126/79, 54 S. E. 808.

Evidence of commission at other times than date alleged, admissible. **Autrey**, 23 A. 764, 97 S. E. 389.

Month mentioned in testimony, without year, will be understood to be of the current year, unless from the connection it appears that another is intended. **Tipton**, 119/304, 46 S. E. 436; **Jordan**, 119/443, 46 S. E. 679; **Plair**, 23 A. 574, 99 S. E. 61.

Subsequent to indictment; conviction not legal. **Parks**, 23 A. 276, 98 S. E. 90.

See Criminal Law, 1, catchwords, Limitation, Time of offense.

Title or occupancy, sufficient proof of. **Morgan**, 120/502, 48 S. E. 238.

Tracks and threat, evidence as to, here, insufficient to warrant conviction. **Ross**, 109/516, 35 S. E. 102.

As circumstance tending to show guilt. **Morris**, 12 A. 810, 78 S. E. 477; **Hawthorne**, 12 A. 811, 78 S. E. 473; **Green**, 111/140, 36 S. E. 609; **Lawson**, 21 A. 140, 94 S. E. 52; **Gaither**, 119/118, 45 S. E. 973; **Young**, 121/335, 49 S. E. 256; **Park**, 123/164, 51 S. E. 317; **Williams**, 123/278, 51 S. E. 344; **Whipple**, 123/278, 51 S. E. 344; **Whipple**, 123/580, 51 S. E. 590; **Lindsey**, 15 A. 13, 82 S. E. 378; **McCoy**, 18 A. 698, 90 S. E. 355; **Sandlin**, 22 A. 115, 95 S. E. 477; **Jackson**, 22 A. 131, 95 S. E. 537; **Reynolds**, 22 A. 552, 96 S. E. 499; **Parris**, 17 A. 478, 87 S. E. 707; **Aiken**, 17 A. 721, 88 S. E. 210.

As circumstantial evidence; cases collected. **Wade**, 16 A. 163, 84 S. E. 593. Not sufficient here. **Randolph**, 16 A. 330, 85 S. E. 258. Not sufficient corroboration of confession here. **Sneed**, 16 A. 351, 85 S. E. 354. Insufficient here. **Smith**, 7 A. 783, 68 S. E. 335; **Banks**, 7 A. 812, 68 S. E. 334.

As evidence of crime; comparison by forcibly putting prisoner's foot in. **Underwood**, 13 A. 210, 78 S. E. 1103.

Conduct of dogs in following; admissibility of evidence as to. *Fite*, 16 A. 22, 84 S. E. 485; *Aiken*, 16 A. 848, 86 S. E. 1076; *Aiken*, 17 A. 722, 88 S. E. 210; *Harris*, 17 A. 723, 88 S. E. 121.

Conformability of feet of accused to. *Elder*, 143/363, 85 S. E. 97.

Identification by, discussion as to sufficiency of, to convict. *Patton*, 117/230, 235, 43 S. E. 533.

That accused was forced to make, when no error to refuse to exclude. *Dunwoody*, 118/308, 45 S. E. 412.

Transaction on which true bill based, testimony as to grand jury's investigation not admitted to show. *Davis*, 105/783, 32 S. E. 130.

Trespass; allegation of possession in A, not supported by proof that A held as agent of B. *Jackson*, 124/135, 52 S. E. 155.

Variance as to amount of money alleged to have been stolen. *Finkelstein*, 105/624, 31 S. E. 589.

Allegation of ownership in C. S. Railroad Co., proof that owner was C. S. Railway Co.; variance not material. *Davis*, 105/811, 32 S. E. 158.

As to name; none where proof was that person was generally known as well by name alleged as by true name. *Hainey*, 107/711, 33 S. E. 418.

As to ownership; indictment for trespass on lands of A and B, proof of, on land of A or B. *Eubank*, 105/612, 31 S. E. 741.

As to ownership and possession of land, in trespass. *Jackson*, 124/135, 52 S. E. 155. None as to procurement of money. *McCoy*, 124/220, 52 S. E. 434.

As to writing, to which accused falsely swore, fatal to conviction. Dissent: Variance was as to part as to which there was no allegation of falsity. *Thompson*, 118/330, 45 S. E. 410.

As to proceeding in which perjury was committed, when fatal. *Wilson*, 115/209, 41 S. E. 696, 90 Am. St. R. 104.

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Between contract alleged in indictment and that proved, conviction set aside. *Chapple*, 126/638, 55 S. E. 471.

As to place of crime. *Johnson*, 1 A. 195, 58 S. E. 265. None here as to sale. *Southern Express Co.*, 1 A. 700, 58 S. E. 67.

As to sale of liquor. *Barlow*, 127/58, 56 S. E. 131.

"Fawn-colored Jersey heifer about eighteen months old," and "fawn-colored heifer." *Hardy*, 112/18, 37 S. E. 95.

In corporate name of owner, rule as to. *Davis*, 105/811, 32 S. E. 158.

Manner of deceit and obtainment of credit. *Carey*, 112/226, 228, 37 S. E. 405; *Reagan*, 112/372, 37 S. E. 380.

None where ownership laid in Mrs. G. B., and proof is that owner is R. S. B. wife of G. B. *Weaver*, 116/550, 42 S. E. 745.

Not fatal where indictment was for simple larceny and proof showed larceny from house. *Gardner*, 105/664, 31 S. E. 577; *Mattox*, 115/213, 41 S. E. 709.

As to ownership of property, in robbery. *Staples*, 114/256, 40 S. E. 264. As to weight of cotton bales stolen. *Green*, 114/918, 41 S. E. 55.

Of words from prescribed form of indictment, but meaning the same in substance. *Hardin*, 106/386, 32 S. E. 365, 71 Am. St. R. 269.

When fatal. *Haupt*, 108/53, 34 S. E. 313, 75 Am. St. R. 19. *Aliter*, *Haupt*, 108/60, 33 S. E. 829.

Precise proof of alleged weight of stolen cotton bales, not necessary. *Green*, 114/918, 41 S. E. 55.

When arrest of judgment is not remedy for. *Seals*, 107/713, 33 S. E. 392.

When not caused by proof of date different from that alleged at date of criminal act. *Wheeler*, 4 A. 325, 61 S. E. 409.

When not result from alleging that ownership is unknown, proving ownership. *Ray*, 4 A. 67, 60 S. E. 816.

"Violence," meaning of. *Yarborough*, 17 A. 830, 88 S. E. 710.

Character for; and proof of specific acts of violence. *Long*, 127/350, 56 S. E. 424.

Character for, when not admissible. *Nix*, 120/162, 47 S. E. 516; *Owens*, 120/210, 47 S. E. 545.

Particular act of, when not admissible on murder trial. *Andrews*, 118/1, 43 S. E. 852.

Voice, identification by, insufficient here. *Patton*, 117/230, 235, 43 S. E. 533.

Warrant, admissibility of entries on, as original evidence on trial under indictment, when made by magistrate presiding at preliminary hearing. *McCalman*, 121/491, 49 S. E. 609.

Not exhibited to accused who killed officer attempting arrest, admissible in evidence as tending to show he was "fugitive from justice." *Harper*, 129/772, 59 S. E. 792.

Itself best evidence, if its contents be material. But admission authorized instruction to jury. *Chastain*, 3 A. 448, 60 S. E. 112.

Weakness of evidence, no reason for setting aside conviction. *Brooks*, 21 A. 156, 94 S. E. 61; *Jones*, 21 A. 504, 94 S. E. 629.

Weapon; broken curtain pole found behind trunk or near deceased, admissible on trial for murder here. *Roberts*, 123/148, 51 S. E. 374.

Difference between *allegata* and *probata* as to, not sufficient to prevent conviction, when; cases collected. *Watson*, 21 A. 637, 94 S. E. 857; *Burney*, 22 A. 622, 97 S. E. 85.

Failure to show that knife used by deceased was likely to cause death. *Smith*, 23 A. 77, 97 S. E. 454.

Nature of; issue whether law of involuntary manslaughter was applicable to homicide by striking with a billy, evidence not disclosing that it was deadly, etc. *McDonald*, 23 A. 61-63, 97 S. E. 448.

Opinion of physician as to, when admissible. *Fletcher*, 122/574, 50 S. E. 360.

Properly admitted in evidence here. *Boynton*, 115/588, 41 S. E. 995.

Weight of circumstances must be left to jury. *Moody*, 114/449, 40 S. E. 242.

Of evidence. Proof of guilt beyond reasonable doubt required; no other instruction appropriate. *Mill*, 2 A. 398, 58 S. E. 673.

Wife, husband not competent witness against, on her trial for crime; crime against his person not excepted. *Ector*, 10 A. 777, 74 S. E. 295.

Not competent to make affidavit for warrant or sign accusation against participant in adultery with husband. *Smith*, 14 A. 614, 81 S. E. 912.

Not incompetent to testify on trial of another than husband, charged with same offense. *Fuller*, 109/809, 35 S. E. 298.

Of accused, incompetent as witness. *Perry*, 102/367, 30 S. E. 903.

Incompetency of, as witness on trial of husband for crime, no error in omitting charge to jury as to, in view of other instructions. *Dunham*, 8 A. 668, 70 S. E. 111.

Statement of, constituting part of *res gestæ*, not admissible against husband. *Wicker*, 14 A. 665, 82 S. E. 58.

Witness before grand jury compelled to answer, though his testimony may relate to gaming in which he participated. *Wheatley*, 114/175, 39 S. E. 877.

Before grand jury, oath to, other than prescribed; plea bad. *Lennard*, 104/546, 30 S. E. 780.

Called who is of kin to juror, and not on list of witnesses furnished, no ground for excluding or for mistrial. *Echols*, 101/531, 29 S. E. 14.

Competency of child as. *Richardson*, 141/782, 82 S. E. 134.

Competency of one of married couple as, on trial of person charged with adultery with the other. *Thomas*, 115/235, 41 S. E. 578.

Competency of wife, on trial of one charged with same offense as her husband. *Fuller*, 109/809, 35 S. E. 298.

Compulsory process for attendance of. *Smith*, 118/61, 44 S. E. 817.

Confronting accused with, not required at hearing before grand jury; nor is State required to introduce the only eye-witness to the homicide. *Harper*, 131/771, 63 S. E. 339.

Corroboration and credit of. *Fields*, 2 A. 41, 58 S. E. 327; *Carter*, 2 A. 254, 58 S. E. 532.

Deceased, evidence of, on former trial; whole goes in as introduced by party offering a part. *Waller*, 102/684, 28 S. E. 284.

Indictments against, would throw light on state of his feeling toward accused, and tend to discredit him. *Purdee*, 118/798, 45 S. E. 606.

Failure to call, when raises a presumption, *Davis*, 4 A. 444, 61 S. E. 843.

Feelings of, shown by record of proceedings against relatives, for injury to property of person not the prosecutor. *Shaw*, 102/661, 29 S. E. 477.

Need not be notified by judge of right to refuse answer to questions the answer to which might incriminate him. *Moore*, 130/322, 60 S. E. 544.

Non-resident, attendance and mileage of, must each be certified by solicitor-general of his own knowledge, not on affidavit of witness. *Freeble*, 114/418, 40 S. E. 243.

Non-resident, for accused; subpoena for, and fees of. *Ivey*, 4 A. 828, 62 S. E. 565.

Not incompetent because name not endorsed on warrant or accusation. *Cunningham*, 107/690, 33 S. E. 664.

Not introduced; refusal to charge this as a circumstance discrediting bona fides of prosecution. *Smalls*, 105/675, 31 S. E. 571.

Not on list furnished accused, not error to allow State to introduce him. *Abbott*, 11 A. 43, 74 S. E. 621.

Not produced; inference and explanation; refusal to charge as to his right to refuse to incriminate himself, error here. *Williams*, 5 A. 95, 62 S. E. 671.

Not required to testify of pending indictment against him. *Huff*, 104/521, 30 S. E. 808.

Offered by prosecution testifying to innocence, contradicting other witness, does not necessarily require acquittal. *Alexander*, 1 A. 239, 57 S. E. 996.

On cross-examination falling ill; proper practice. *Gale*, 135/351, 69 S. E. 357.

Omission of State to introduce, no ground for new trial, though solicitor-general announced that he would produce certain facts by him. *Harper*, 131/772, 63 S. E. 339.

Out of the State, failure of law to provide method for enforcing attendance of, not a denial of due process or equal protection of the laws. *Mind-er*, 113/772, 39 S. E. 284.

Presumption from failure to produce, when not arise against State. *Harper*, 129/770, 774, 59 S. E. 792.

Reluctant, no error in admonishing. *Jones*, 138/136, 74 S. E. 1001.

Removed from the State, former testimony of, when admissible. *Smith*, 147/689, 95 S. E. 281; *Hunter*, 147/819, 95 S. E. 668.

Unsworn, no ground for new trial. *Rhodes*, 122/568, 50 S. E. 361. Infant's understanding of oath, right of accused to have examination as to, though she testified on former trial. *Young*, 122/725, 50 S. E. 996. Examination of, by judge. *Grant*, 122/740, 50 S. E. 946.

Admission by, after trial, that his testimony was false, no cause for setting aside conviction. *Rogers*, 129/590, 59 S. E. 288.

Admission of truth of what absent witness would testify, effect of. *Watson*, 118/68, 44 S. E. 803.

Arrest and imprisonment of, to prevent his leaving jurisdiction before trial. *Crosby*, 8 A. 463, 69 S. E. 582.

Incorrect list of witnesses furnished, not ground for motion to set aside judgment. *Regopoulos*, 116/596, 42 S. E. 1014.

Remedy where accused is not furnished with correct list. *Regopoulos*, 115/232, 41 S. E. 619.

List of witnesses not demanded by accused, failure to furnish, not ground for setting aside verdict. *Fears*, 125/739, 740, 54 S. E. 661, 667.

List of witnesses, provision of constitution as to right of accused to be furnished with, not applied as to offense against municipal ordinance. *Venable*, 7 A. 191, 66 S. E. 489.

List of witnesses, right to. *Gordon*, 102/681, 29 S. E. 444.

Rule as to sequestration of witnesses, discretion of judge to modify. *Keller*, 102/506, 31 S. E. 92; *Shaw*, 102/660, 29 S. E. 477.

Sequestration, how far extended. *Kelly*, 118/330, 45 S. E. 413.

Excluded from court-room before solicitor-general begins his opening statement to jury, witnesses not, whether ground for reversal. *Hughes*, 128/19, 20, 57 S. E. 236.

Words constituting conduct, not excluded under hearsay rule, when. *Fitzgerald*, 10 A. 71, 75, 72 S. E. 541.

Admissibility of testimony that after the difficulty the parties "made friends with each other." *Ogletree*, 18 A. 41, 88 S. E. 751.

No material variance, where opprobrious words alleged were, "God damned hog-thieving sons of bitches," and those proved were "damned hog-stealing son of a bitch." *Wiggins*, 17 A. 749, 88 S. E. 411.

Question whether or not designated words were used, not leading. *Fountain*, 7 A. 559, 67 S. E. 218.

Testimony that defendant charged with using opprobrious words "does not use profanity, and he is generally respectful to white people," not admitted; not proper mode of proving character. *Josey*, 20 A. 85, 92 S. E. 763.

Testimony that the witness considered them profane and vulgar, not admissible, where he did not state literally or in substance what was said. *Lamb*, 121/345, 49 S. E. 275.

Writing incriminating accused, error in admitting, without proof of execution. *Burden*, 147/412, 94 S. E. 232.

In the possession of the accused, parol evidence as to its contents admissible. *Kinsey*, 12 A. 422, 77 S. E. 369.

6. STATEMENT OF ACCUSED.

Additional statement, discretion of court as to allowing. *Sharp*, 111/176, 36 S. E. 633; *Cochran*, 113/741, 39 S. E. 337; *Owens*, 120/209, 47 S. E. 545; *Johnson*, 120/509, 48 S. E. 199; *Williams*, 105/489, 30 S. E. 814.

No absolute right to make. *Dixon*, 116/186, 42 S. E. 357; *Peavy*, 114/260, 40 S. E. 234.

May be repelled (in court's discretion), though additional evidence received. *Williams*, 138/825, 76 S. E. 347; *Knox*, 112/373, 37 S. E. 416.

Defendant can not make more than one statement without permission of court. *Dixon*, 12 A. 18, 76 S. E. 794.

Refusing to allow, was no abuse of discretion. *Handy*, 16 A. 341, 85 S. E. 351; *August*, 20 A. 169, 92 S. E. 956; *Miliken*, 8 A. 478, 69 S. E. 915; *Jones*, 12 A. 133, 76 S. E. 1070; *Tolbert*, 12 A. 686, 78 S. E. 131; *Chambers*, 22 A. 748, 97 S. E. 256; *Carson*, 22 A. 551, 96 S. E. 500; *Pollard*, 144/229, 86 S. E. 1096; *McCall*, 23 A. 770, 99 S. E. 471.

When error to refuse to allow, in rebuttal. *Timmons*, 13 A. 376, 79 S. E. 216.

Admission of fact in statement cured error in admitting secondary evidence to prove it. *McCoy*, 124/218, 52 S. E. 434.

Argument, failure to make statement no basis for. *O'Dell*, 120/154, 47 S. E. 577; *Minor*, 120/490, 48 S. E. 198; *Barker*, 127/276, 56 S. E. 419.

As to failure to make statement, improper; but not as to failure to introduce testimony. *Saffold*, 11 A. 329, 332, 75 S. E. 338.

On defendant's failure to make statement, improper; otherwise as to omissions in statement made. *Coleman*, 15 A. 338, 83 S. E. 154.

On silence of statement as to material facts in evidence against accused, proper. *Tolbert*, 12 A. 685, 78 S. E. 131.

By prosecuting attorney, improper. *Jones*, 14 A. 568, 81 S. E. 801.

Character put in issue by. *McDonald*, 23 A. 63, 97 S. E. 448.

Charge to jury as to statement. *Washington*, 124/424, 52 S. E. 910; *Howell*, 124/698, 52 S. E. 649; *Grant*, 124/757, 53 S. E. 334; *Tolbirt*, 124/767, 53 S. E. 327; *Rouse*, 136/356, 71 S. E. 667; *Fry*, 141/789, 82 S. E. 135.

Statement of accused, as basis of. *Sessions*, 115/19, 41 S. E. 259; *Crawford*, 117/247, 251, 43 S. E. 762; *Smith*, 117/259, 43 S. E. 703; *Walker*, 117/323, 43 S. E. 737; *Cain*, 7 A. 24, 65 S. E. 1069; *Brown*, 10 A. 50, 72 S. E. 537. Proper instructions. *Douglas*, 14 A. 14, 79 S. E. 1134; *Sutherland*, 121/190, 48 S. E. 915; *Hendrix*, 5 A. 820, 63 S. E. 939; *Oppenheim*, 12 A. 481, 77 S. E. 652; *Wilkes*, 16 A. 186, 84 S. E. 721. Charge of court as to, sufficient. *Mathis*, 16 A. 381, 85 S. E. 352; *Nelms*, 18 A. 92, 93, 88 S. E. 917.

That the law "permits" accused to make statement, not error. *Davis*, 14 A. 764, 82 S. E. 297; *Jones*, 14 A. 811, 92 S. E. 470.

That the accused "incurs no penalty in not speaking the truth," not approved, but harmless. *Bates*, 18 A. 718, 724, 90 S. E. 481.

That if jury were satisfied "from the evidence," beyond a reasonable doubt, etc., not exclude statement. *Garrett*, 21 A. 801, 95 S. E. 301.

That "the discovery of truth is limited to the testimony in the case," not exclude statement, the jury having been properly instructed as to the statement. *Swilling*, 18 A. 618, 90 S. E. 78.

That "while the prisoner goes upon the stand where the witnesses go and give their testimony, he is not under oath," not argumentative. *Allen*, 18 A. 4, 88 S. E. 100.

That jury were to find the facts "solely from the testimony," and were "not authorized to go outside of the testimony," did not exclude statement; the law as to the statement being also given. *Mulligan*, 18 A. 464, 467, 89 S. E. 541; *Eidson*, 21 A. 244, 94 S. E. 73.

That the jury should "take the facts," as they got them" from the witness stand did not exclude statement. *Hamilton*, 18 A. 296, 299, 89 S. E. 449.

To look to the "evidence" to ascertain the facts as to a certain matter in issue did not exclude statement; law as to the statement being also given. *Gunter*, 19 A. 772, 776, 92 S. E. 314.

That "there is nothing in this case but the law and the evidence," rendered harmless by instruction requiring jury to consider defendant's statement. *Roberts*, 9 A. 809-10, 72 S. E. 287.

That jury should "consider along with the evidence the defendant's statement," and, after considering the entire case under the law as given in charge, "determine what it is," no ground for new trial here, though subject to criticism. *Crone*, 22 A. 636, 97 S. E. 83.

Should not give law as to, where no such statement made. Such charge harmless here. *Carter*, 7 A. 42, 65 S. E. 1090. Exception not properly taken as to such charge here. *Mason*, 19 A. 623, 91 S. E. 922.

Need not reiterate reference to the statement in each instruction relating to the evidence. *Dunn*, 18 A. 95, 89 S. E. 170; *Bragg*, 15 A. 623, 84 S. E. 82.

Not subject to exceptions taken. *Harris*, 19 A. 741, 742, 92 S. E. 224.

Not approved, but not require new trial; better to follow the statute and there leave the matter. *Morgan*, 119/566, 46 S. E. 836.

Not erroneous in not giving language of statute as to, nor as intimating opinion that sworn testimony is of superior or equal weight. *Webb*, 8 A. 430, 69 S. E. 601.

Instruction, though not necessary, should be given correctly. *Phillips*, 11 A. 262, 75 S. E. 14.

No error for reversal. *Hackett*, 108/41, 33 S. E. 842.

Sufficient, in absence of request. *Conklin*, 21 A. 399, 401, 94 S. E. 600.

Sufficient charge to jury as to. *Dunn*, 16 A. 10, 84 S. E. 488. Not error to refuse to charge that it is as much the duty of the jury to consider the defendant's statement as it is to consider the sworn testimony. *Ib.*

That no penalty attaches to a false statement, not error. *Webb*, 8 A. 430, 69 S. E. 601; *Turner*, 20 A. 165, 92 S. E. 975.

That accused "goes there to make just such statement as he may deem proper in his own behalf," not error. *Davis*, 14 A. 764, 82 S. E. 297.

Properly given; no error in omitting further reference to statement. *Cobb*, 11 A. 52, 74 S. E. 702.

As to statement, considered. *Walker*, 21 A. 193, 94 S. E. 60.

Omission of, as to statement, error. *Vinson*, 124/453, 52 S. E. 761. Failure not harmful, no error. *Culver*, 124/822, 58 S. E. 316.

Omission of, as to one of two theories presented by statement, not error though the court charged as to the other. *Smith*, 117/259, 43 S. E. 703.

Omission of, as to statement, not ground for new trial, where it did not deny guilt, and the evidence for the State was uncontradicted and sufficient to warrant conviction. *McLane*, 20 A. 825, 93 S. E. 558.

Excluding theory of statement, error. *Garland*, 124/832, 53 S. E. 314.

Inaccurate, but not misleading. *Walker*, 120/491, 48 S. E. 184.

That the jury get the law from the court, the facts from the witnesses and the defendant's statement, and "to the

one you apply the other," not misleading. *Batchelor*, 18 A. 756, 90 S. E. 487.

That jury should confine themselves to the evidence did not exclude from consideration the defendant's statement, where they had been properly instructed as to the statement. *Griggs*, 17 A. 304, 86 S. E. 726.

Approved. *Barnes*, 113/719, 39 S. E. 488.

As to what verdict should be if jury found statement to be true, need not be given, when not requested. *Taylor*, 121/356, 49 S. E. 303.

On theory presented by statement, refusal of, error. *Dozier*, 12 A. 722, 724, 78 S. E. 203.

On weight of testimony, disregarding statement, error. *Peak*, 5 A. 58, 62 S. E. 665.

Instruction to jury required, although not requested. *Bryant*, 23 A. 3, 97 S. E. 271.

That jury should look to defendant's statement in connection with the testimony (or as well as the testimony), not necessary, after correct charge on the law relating to such statements. *Brooks*, 19 A. 45, 90 S. E. 971.

That jury need not consider a certain part of the statement, error. *Black*, 17 A. 294, 86 S. E. 659.

That a certain fact stated in the defendant's statement was not a proper thing to be considered by jury, error. *Fite*, 16 A. 22, 84 S. E. 485.

Comments in, as to statement, not erroneous here. *Strickland*, 115/228, 41 S. E. 713.

On contention raised by statement must be duly requested in writing. *Hunter*, 133/79, 65 S. E. 154.

No error in not charging jury on theory presented only by statement, in absence of request. *Weldon*, 21 A. 331, 94 S. E. 326; *Garrett*, 21 A. 801, 95 S. E. 301; *Gray*, 6 A. 428, 65 S. E. 191; *Collins*, 121/173, 48 S. E. 903; *West*, 121/365, 49 S. E. 266; *Rentfrow*, 123/542, 51 S. E. 596; *Johnson*, 4 A. 59, 60 S. E. 813; *Cobb*,

11 A. 52, 74 S. E. 702; Strickland, 11 A. 427, 75 S. E. 446; Thigpen, 11 A. 846, 76 S. E. 576; Jackson, 13 A. 148, 78 S. E. 867; Morgan, 17 A. 126, 86 S. E. 281; Curry, 17 A. 313, 86 S. E. 742; Crews, 17 A. 465, 87 S. E. 604; Murray, 17 A. 562, 87 S. E. 828; Jordan, 9 A. 578, 71 S. E. 875; Grant, 19 A. 229, 91 S. E. 338; Burney, 22 A. 622, 9 S. E. 85; Brinson, 22 A. 649, 97 S. E. 102; Green, 22 A. 793, 97 S. E. 201; Mulling, 18 A. 205, 89 S. E. 221; Swilling, 18 A. 619, 90 S. E. 78; Lott, 18 A. 747, 90 S. E. 727; Thornton, 18 A. 745, 90 S. E. 489; Brundage, 14 A. 460, 81 S. E. 384; Pettigrew, 14 A. 463, 81 S. E. 446; Shelton, 15 A. 341, 83 S. E. 152; Carter, 15 A. 343, 83 S. E. 153; Wilensky, 15 A. 360, 83 S. E. 276; Reed, 15 A. 435, 83 S. E. 674; Sheffield, 15 A. 514, 83 S. E. 871; Bryant, 15 A. 535, 83 S. E. 795; Bragg, 15 A. 628, 84 S. E. 82; Hardin, 107/719, 33 S. E. 700; Channell, 109/153, 34 S. E. 353; Parks, 105/248, 31 S. E. 580; Barfield, 105/491, 30 S. E. 743; Andrews, 118/4, 43 S. E. 852. That reasonable doubt may arise from, need not be charged. Walker, 118/34, 44 S. E. 850. Defense of alibi. Walker, 118/757, 45 S. E. 608; Murphy, 118/780, 45 S. E. 609. If charged on at all, instructions must cover defense set up. Stephens, 118/762, 45 S. E. 619. Involuntary manslaughter. Middlebrooks, 118/773, 45 S. E. 607. Exception to rule that theory raised only by statement need not be charged on. Thornton, 18 A. 745, 90 S. E. 489. No error in not charging jury on theory raised only by, in absence of request. Tyson, 23 A. 20, 97 S. E. 458. If such charge be given, it must be correct; harmful error in stating contentions not supported by evidence or by defendant's statement; argument of counsel will not justify such charge. Key, 21 A. 300, 94 S. E. 283.

May be confined to language of code section, but need not be; best practice is to follow the statute literal-

ly. Brundage, 7 A. 728, 67 S. E. 1051; Mixon, 7 A. 805, 68 S. E. 315.

Of code law as to, sufficient where no special request. Taylor, 131/765, 63 S. E. 296.

Substantially in language of code, sufficient. Smith, 13 A. 32, 78 S. E. 685.

Proper, the statute merely. Caesar, 127/710, 57 S. E. 66.

Statute contains all the law to be given to the jury in charge of court. Taylor, 132/235, 63 S. E. 1116; Glover, 137/82, 72 S. E. 926.

Better to confine charge of court to language of statute, in charging as to statement. Dunn, 18 A. 96, 89 S. E. 170; Bates, 18 A. 718, 724, 90 S. E. 481; Harker, 8 A. 93, 68 S. E. 650; Stevens, 8 A. 217, 68 S. E. 874; Brown, 14 A. 508, 81 S. E. 590; McDonald, 129/452, 59 S. E. 242.

When no requirement to charge on reasonable doubt arising from. Langston, 23 A. 82, 97 S. E. 444.

Consideration of statement of accused. Cargile, 137/775, 74 S. E. 621.

Constitutionality of law not allowing accused to testify. Wilson, 11 A. 449, 75 S. E. 671.

Contradictory statement made at former trial, shown by testimony of stenographer, after refreshing memory from notes; rule as to laying foundation for impeachment, not applied to such statements. Smith, 17 A. 298, 86 S. E. 660. Statement not proof within meaning of code-section which provides how a witness attacked by proof of contradictory statements may be sustained. Stockton, 20 A. 186, 92 S. E. 1019.

Conviction founded on statement. Rawls, 124/11, 52 S. E. 72.

Corroboration of defendant's statement, by unimpeached witness, carried burden of explanation here. Bray, 5 A. 605, 63 S. E. 596.

What testimony not received for. Pride, 133/443, 66 S. E. 259.

Counsel for accused is not entitled to ask him questions. Judge's discretion as to allowing suggestions by counsel.

Bass, 4 A. 844, 62 S. E. 540; **Echols**, 109/508, 34 S. E. 1038; **Roberson**, 12 A. 102, 76 S. E. 752.

Discretion in not allowing, not abused. **Whitley**, 14 A. 577, 81 S. E. 797; **Robinson**, 129/337, 58 S. E. 842. Discretion to allow counsel to suggest omission; how exercised. **Story**, 145/43, 88 S. E. 548.

For accused has no right to ask him question, or to suggest addition to his statement; but so doing does not subject him to cross-examination. **Walker**, 116/537, 42 S. E. 787, 67 L. R. A. 426.

Not allowed to read statement of defendant to jury. **Brown**, 10 A. 50, 72 S. E. 537.

Advice of, causing client on trial for crime to refrain from making statement to jury, not avail client as ground for new trial. **Walker**, 17 A. 321, 86 S. E. 735.

Cross-examination of defendant, failure to object to, was waiver of objection. **Frazier**, 14 A. 109, 80 S. E. 209.

Defendant may be cross-examined by his consent; counsel for prosecution may decline his offer to submit to cross-examination. **Jones**, 18 A. 285, 89 S. E. 303.

Error in ruling that defendant could not be cross-examined by his consent, was harmless. **Jones**, 18 A. 285, 89 S. E. 303.

Statement of accused made, and cross-examination submitted to; further questions may be excluded. **Lindsay**, 138/819, 76 S. E. 369.

Discrediting statement by proof of conduct showing bad faith. **Belt**, 103/13, 29 S. E. 451.

By discrepancy between his statement and testimony of his witness. **Fletcher**, 12 A. 810, 78 S. E. 478.

Discretion not abused in refusal to allow accused to descend from stand where he was making statement, to explain positions to jury. **Foskey**, 119/75, 45 S. E. 967.

Disparaging intimation as to statement in charge of court, error. **Field**, 126/572, 55 S. E. 502.

Effect of defendant's statement not to be curtailed by rulings, merely because a part may be irrelevant under rules of evidence. **Fite**, 16 A. 22, 84 S. E. 485.

Error in charge as to contention raised by; and in admitting illegal evidence tending to discredit. **Turner**, 131/761, 63 S. E. 294.

Evidence, statement should be tested in light of. **Barnes**, 113/719, 39 S. E. 488; **Walker**, 120/491, 48 S. E. 184; **Murphy**, 122/149, 50 S. E. 48; **McBeth**, 122/737, 50 S. E. 931; **Tucker**, 133/470, 66 S. E. 250; **Lee**, 102/221, 29 S. E. 264; **Keller**, 102/507, 31 S. E. 92; **Smalls**, 105/669, 31 S. E. 571; **Delk**, 135/312, 69 S. E. 541, 22 L. R. A. (N. S.) 105.

Corroborative of statement, when relevant. **Worrill**, 116/853, 43 S. E. 247.

Admissibility of, in rebuttal of statement. **Lucas**, 146/315, 91 S. E. 72.

That accused's mother had made threat not in his presence, not admissible in rebuttal. **Owens**, 118/753, 45 S. E. 598.

Admissibility of accused's previous declarations not according with. **Coleman**, 141/732, 82 S. E. 228.

Statement of accused, in connection with, as basis for setting aside conviction. **Williams**, 6 A. 155, 64 S. E. 492.

Failure to make statement at trial, not give rise to presumption against accused. **Jones**, 14 A. 811, 82 S. E. 470.

To make statement, caused by defendant's counsel, no ground for new trial. **Walker**, 17 A. 321, 86 S. E. 735.

Harmless instruction as to. **Stephens**, 21 A. 151, 152, 94 S. E. 69.

To make statement; court not required to charge jury (without request) that failure should not be considered. **Bargeman**, 17 A. 807, 88 S. E. 591.

Former trial, statement of accused on, when State allowed to introduce part of. **Smalls**, 105/669, 31 S. E. 571.

Foundation for introducing testimony not otherwise admissible, in defendant's favor, could not be laid in his statement. *Wiggins*, 16 A. 477, 85 S. E. 674; *Nix*, 120/162, 47 S. E. 516. Statement of defendant not a proper means of identifying or showing genuineness of things referred to, as preliminary to introducing them in evidence. *Register*, 10 A. 623, 74 S. E. 429.

Hearsay in statement, error to charge that it has no probative value and cannot be considered. Error harmless, where hearsay immaterial. *Stanley*, 9 A. 141, 70 S. E. 894.

Stopped by judge, but afterwards allowed; new trial not required. *Robinson*, 128/259, 57 S. E. 315.

Identification by prisoner's statement to jury, not render thing admissible as evidence. *Register*, 10 A. 623, 74 S. E. 429.

Inconsistent defenses, no error in charging jury on, where defendant's statement left it in doubt as to which he relied on. *Cook*, 22 A. 770, 773, 97 S. E. 264.

Intent. Defendant's statement to jury, that he had refused an offer to settle the case on payment of \$1 and costs, could be considered in determining as to his good faith in act alleged to be trespass. *Black*, 1 A. 294, 86 S. E. 659.

Interference with statement by exclamations and laughter of persons present at trial, sufficient means not used by court to remove prejudicial effect. *Robinson*, 6 A. 697, 704, 65 S. E. 692.

Interrupting and restricting statement, error; rules for exclusion of testimony not applied to. His reasons, including acts of others, were admissible here. *Woodall*, 4 A. 783, 62 S. E. 485.

Joint trial, statements of codefendants on, error in instruction limiting effect of. *Roberson*, 14 A. 557, 81 S. E. 798.

Prisoner's statement not to be considered in finding guilt or innocence of others jointly indicted with him. *Berry*, 122/429, 50 S. E. 345.

Statement of accused on trial with codefendants, not avail the latter; court could withdraw it from jury after consent verdict acquitting the former. *Williams*, 107/722, 33 S. E. 648.

Testimony given by one jointly tried not treated as statement of accused, but as evidence. *Staten*, 140/110, 78 S. E. 766.

Judge, question by, at conclusion of prisoner's statement, error. *Hackney*, 101/512, 28 S. E. 1007.

Power of, to restrict matter and extent of statement; no error in refusing to allow reading of letter as part of. *Nero*, 126/555, 55 S. E. 404.

Remark by, that he had allowed defendant to make a "full" statement was not an expression as to credibility or weight. *Bass*, 4 A. 844, 62 S. E. 540.

Remarks by, on being requested to allowed prisoner to supplement statement, prejudicial error. *Jenkins*, 123/523, 51 S. E. 598.

Interruption of statement by, when no cause for new trial. *Cullins*, 148/17, 95 S. E. 675.

May interfere with statement, how far. Not to restrain, for presenting matters irrelevant and constituting no defense in law. *Richardson*, 3 A. 313, 59 S. E. 916.

Discretion to require accused to omit entirely irrelevant matters. But not to be embarrassed by rules of evidence. *Tiget*, 110/245, 34 S. E. 1023.

May admonish accused to come speedily to the issue, when statement long and rambling. *Long*, 118/319, 45 S. E. 416. Rambling statement, when may be curtailed. *Sutton*, 2 A. 417, 58 S. E. 544.

Right to make statement should not be abridged; judge's interruption not proper, but not harmful here. *Skinner*, 13 A. 370, 79 S. E. 181.

Right of, to interrupt defendant while stating wholly irrelevant matters, and to direct him to confine his statement to the case. *King*, 9 A. 609, 71 S. E. 943; *Jordan*, 10 A. 218, 73 S. E. 35.

Must not impress jury to be cautious in crediting statement. *Alexander*, 114/266, 40 S. E. 231.

Jury may treat statement as true in part and false in part. *Cain*, 7 A. 24, 65 S. E. 1069.

May believe part, to exclusion of other parts, and court may charge jury on theory based on part only. *Smallwood*, 17 A. 516, 87 S. E. 761.

Not bound to give any weight and credit to statement. *Mitchell*, 147/469, 94 S. E. 570.

Though uncontradicted. *Robinson*, 6 A. 696, 697, 65 S. E. 692.

May accept in part and reject in part; rejection may extend to uncontradicted parts; verdict may be supported by selecting part of evidence and part of statement. *Smith*, 8 A. 682, 70 S. E. 42.

Right of, to prefer statement. *Rouse*, 135/228, 69 S. E. 180.

Unless credited by, statement of no effect. *Smarrs*, 131/25, 61 S. E. 914.

Belief in statement; instruction as to, upheld. *Bridges*, 103/26, 29 S. E. 859. No error in charging that jury were under no obligation to believe statement, etc. *Stevens*, 8 A. 217, 68 S. E. 874.

No error in charging that jury may believe the statement in preference to the sworn testimony, "provided they believe it to be true." *Smith*, 13 A. 666, 79 S. E. 764; *McCullough*, 10 A. 405, 73 S. E. 546; *Galliard*, 16 A. 195, 84 S. E. 837; *Carter*, 15 A. 343, 83 S. E. 153; *Hill*, 17 A. 295, 86 S. E. 657; *Brown*, 14 A. 508, 81 S. E. 590; *Haar*, 14 A. 550, 81 S. E. 811.

Statement may be believed in preference to evidence; jury must know this. *Fields*, 2 A. 41, 58 S. E. 327.

Court should charge jury as to their right to believe statement in preference to sworn testimony, though no charge requested. *Rivers*, 8 A. 694, 70 S. E. 47.

Language of code section covers law of statement. *Washington*, 136/66, 70 S. E. 797.

Letter not admissible as part of statement, without proof of genuineness, but its contents may be stated in. *Gaston*, 9 A. 824, 72 S. E. 285.

Of another person, admissions in, not admissible in corroboration of statement. *Gallaher*, 22 A. 640. When no error in refusing to allow reading of letters, etc., as part of. *Woodard*, 5 A. 477, 63 S. E. 573.

Map used in, can not be commented on in argument of counsel. *Nobles*, 127/213, 56 S. E. 125.

Mistrial not required because of spectator's exclamation as to the untruthfulness of the statement. *Esa*, 19 A. 14, 90 S. E. 732.

Murder, statement demanded verdict of guilty of. *Perry*, 102/367, 30 S. E. 903; *Luby*, 102/634, 29 S. E. 494.

New trial not required because judge, after charging jury that they could believe the statement wholly or in part, failed to charge that they might disbelieve it entirely. *Cody*, 17 A. 261, 86 S. E. 462; *Linder*, 17 A. 310, 86 S. E. 741.

Oath, defendant's offer to make, and submit to cross-examination, not entitle his counsel to interrogate him, where State's counsel declined to cross-examine. *Roberson*, 12 A. 102, 76 S. E. 752.

When not error to instruct jury to remember statement is not under, and does not subject him to penalty. *Teasley*, 105/842, 32 S. E. 335.

Statement not under; statutory provision not applied on trial for contempt of court. *Carson*, 146/726, 92 S. E. 221.

Parol proof of statement made at commitment trial not admissible; presumed that it was reduced to writing, as the law required it to be. *McDuffie*, 17 A. 343, 86 S. E. 821.

Statement of prisoner at coroner's inquest may be proved by. *Green*, 124/343, 53 S. E. 431; cf. *Washington*, 124/424, 52 S. E. 910.

Plat or diagram, use of, in statement. *Crawford*, 117/253, 43 S. E. 762.

Presumption against accused, not arise from failure to make statement at trial. *Jones*, 14 A. 811, 82 S. E. 470.

Instruction that "there is no presumption . . . as to whether it is true or false," not subject to exception taken. *Dunn*, 18 A. 96, 89 S. E. 170.

Statement relied on, and no testimony introduced, by accused; no presumption from failure to call witness, when. *Davis*, 4 A. 444, 61 S. E. 843.

Privilege of statement is much abused. *Walker*, 116/539, 42 S. E. 787, 67 L. R. A. 426.

Reading documents in statement. *Freeney*, 129/764, 59 S. E. 788.

Reasonable doubt, statement of accused, as raising. *Fitzgerald*, 136/163, 71 S. E. 128.

May grow out of defendant's statement; omission so to charge, not error here. *Tedder*, 13 A. 630, 79 S. E. 580.

Omission to refer to statement, in part of charge on, not error. *Phinazee*, 22 A. 258, 95 S. E. 878; *Belton*, 21 A. 794, 95 S. E. 299; *Griggs*, 17 A. 304, 86 S. E. 726; *Everett*, 15 A. 390, 83 S. E. 428; *Cartledge*, 15 A. 396, 83 S. E. 430; *Riggins*, 15 A. 400, 83 S. E. 503.

Rebuttal of statement. *Goolsby*, 133/427, 66 S. E. 159.

Reference to statement by judge charging jury, as statement of "prisoner," not error, though the accused was not actually imprisoned. *Allen*, 18 A. 1, 88 S. E. 106.

Reopening case after both sides closed, to allow accused to make statement, discretion as to, not controlled. *Dunwoody*, 118/308, 45 S. E. 412.

Right to have statement passed on. *Daniels*, 118/21, 44 S. E. 818. Waiver of right to make, by announcing closed. *Dunwoody*, 118/309, 45 S. E. 412.

Settle case on payment of \$1 and costs, defendant's statement to jury that he had refused an offer to, could be considered in determining as to his good faith. *Black*, 17 A. 294, 86 S. E. 659.

Slander, action for, when cannot be based on statement of accused. *Nelson*, 9 A. 131, 70 S. E. 599.

Sole defense, defendant's statement that he acted in self-defense; proper instructions to jury. *Thornton*, 18 A. 745, 90 S. E. 489.

Theory of defense raised by statement. *Cargile*, 136/55, 70 S. E. 873; *Richards*, 136/67, 70 S. E. 868; *Watson*, 136/236, 71 S. E. 122; *Helms*, 136/799, 72 S. E. 246; *Smith*, 147/682, 95 S. E. 223; *Whitfield*, 135/248, 69 S. E. 114.

Inferable from statement, may uphold conviction. *Chester*, 3 A. 332, 59 S. E. 843.

Time of making statement may be at any stage of the case, before the close of the evidence, when the prosecution is not introducing testimony. *Dixon*, 12 A. 18, 76 S. E. 794.

Voluntary manslaughter, statement authorized charge on. *Tuggle*, 119/969, 47 S. E. 977.

Weight of statement for jury. They may disregard it if they believe it to be a pretense or subterfuge. *Smith*, 127/44, 56 S. E. 73; *Gaskins*, 127/51, 55 S. E. 1045.

No error in omitting "and shall have such force only as the jury may think right to give it." *Harker*, 8 A. 93, 68 S. E. 650.

Charge to jury to give such weight as they deemed proper "if any," to the defendant's statement; not an improper intimation. *Rothschild*, 12 A. 728, 78 S. E. 201.

Witness, defendant cannot be sworn as; this includes trial in police court for violation of city ordinance. *Frazier*, 14 A. 109, 80 S. E. 209; *Williams*, 11 A. 194, 74 S. E. 1039.

Accused can not testify as; can make statement. This does not affect validity of law penalizing cheating. *Wilson*, 138/489, 75 S. E. 619.

Whether charge to jury as to impeachment of witnesses may be based on statement, doubted. *McCollum*, 119/311, 46 S. E. 413, 100 Am. St. R. 171.

Charge not objectionable as impressing jury that it was optional with accused to testify and be cross-examined. *Harper*, 129/774, 59 S. E. 792.

7. PARTICULAR OFFENSES.

Abandonment of child by father. *Gentry*, 15 A. 641, 83 S. E. 1099.

Not penal if his wants be provided for by others. *Mays*, 123/507, 51 S. E. 503; *Williams*, 126/637, 55 S. E. 480.

Not penal, unless child left destitute, though unwillingly cared for by others. *Dalton*, 118/196, 44 S. E. 977; *Baldwin*, 118/328, 45 S. E. 399.

Demand that father provide for child need not be shown in prosecution for. *Floyd*, 17 A. 265, 86 S. E. 460.

Absence a necessary element of. Fact supporting conviction. *Brown*, 122/568, 50 S. E. 378.

Before birth, denial of paternity; conduct and sayings of accused, when not admissible. *Jackson*, 1 A. 723, 58 S. E. 272.

Offense complete, when. Second conviction not had where abandonment continuous. *Gay*, 105/599, 31 S. E. 569, 70 Am. St. R. 68.

"Child," in accusation, treated as meaning legitimate child. *Woodard*, 18 A. 59, 88 S. E. 825.

Effect of judgment for alimony. *King*, 12 A. 482, 77 S. E. 651.

Essential elements of the offense. *Campbell*, 20 A. 191, 92 S. E. 951.

Essentials of the offense; it continues, and statute of limitation does not begin to run, so long as desertion and non-support of dependent child continue. *Phelps*, 10 A. 41, 72 S. E. 524.

Mother's misconduct and refusal to live with father no defense for. *Moore*, 1 A. 502, 57 S. E. 1016.

Immaterial that defendant was driven from home and his wife threatened by wife and father-in-law. *Parrish*, 10 A. 836, 74 S. E. 445. Venue not proved. *Ib.* Conviction warranted. *Brown*, 10 A. 457, 73 S. E. 606.

Offense committed by driving wife from home with babe and leaving it dependent on wife and others. *Daniels*, 8

A. 469, 69 S. E. 588. Unfriendly relations with wife, immaterial. *Ib.* 470.

Venue, in county where dependency on others begins on account of withdrawal of father's presence and support. *Cleveland*, 7 A. 622, 67 S. E. 696; *Ware*, 7 A. 797, 68 S. E. 443; *Boyd*, 18 A. 623, 89 S. E. 1091.

Conviction authorized, where there was evidence that the father (against whom the prosecution was begun 12 days after the child's birth) had deserted the mother during pregnancy, and continued living apart from her, that the child was dependent, and that he failed to provide for its needs, though not requested to do so, and though the mother did so. *Campbell*, 20 A. 191, 92 S. E. 951.

Conviction warranted by evidence. *Anderson*, 4 A. 63, 60 S. E. 802; *Gentry*, 15 A. 641, 83 S. E. 1099.

Conviction warranted; circumstances sufficient to show marriage of defendant and child's mother. *Wynne*, 17 A. 263, 86 S. E. 823. Demand on father, that he provide for child, need not be shown. *Floyd*, 17 A. 265, 86 S. E. 460.

Defendant's marriage proved by witness testifying to marriage in fact, without evidence as to authority of person officiating, or of compliance with statutory requirements. *Cunningham*, 13 A. 80, 78 S. E. 780.

Evidence insufficient to show that child was left destitute, conviction not warranted. *Williams*, 121/196, 48 S. E. 938.

No offense unless the child was born. *Shelton*, 19 A. 618, 91 S. E. 923.

Not necessary to show that the child is in a destitute condition. The statute may be violated though father and child continue to occupy the same house. *Goffe*, 14 A. 275, 80 S. E. 519.

Abortion or miscarriage, meaning of "child," in code provisions as to. *Taylor*, 104/846, 33 S. E. 190.

Assault to murder by; conviction warranted. *Sullivan*, 121/185, 186, 48 S. E. 949; *Barrow*, 121/187, 48 S. E. 950.

Admissibility of testimony introduced on trial for. *Sullivan*, 121/185, 186, 48 S. E. 949; *Barrow*, 121/187, 48 S. E. 950.

Attempt to produce. *Rosette*, 5 A. 492, 63 S. E. 513.

Character of female, inadmissible testimony as to. *Gullatt*, 14 A. 53, 80 S. E. 340. Mother not indictable as accomplice. *Ib.* Admissions of principal offender admissible on trial of accessory. *Ib.*

Charge that jury must believe principal is guilty, before finding alleged accessory guilty, not required, where the evidence demands conviction of principal. *Gullatt*, 14 A. 53, 80 S. E. 340.

Consent by female, for purpose to conceal her shame, no excuse for. *Barrow*, 121/188, 48 S. E. 950.

Harmless errors in admitting testimony. *Gullatt*, 14 A. 53, 80 S. E. 340.

Indictment and evidence sufficient, as to accessory before the fact. *Gullatt*, 14 A. 53, 80 S. E. 340. Proof of sexual intimacy, admissibility of. *Ib.*

Intent to destroy fœtus not known to be "quick" extends to the consequence of the act. *Barrow*, 121/188, 48 S. E. 950.

Abusive language. See catchword "Provocation."

Adulterated food; violation of law by sale of part of deceased cow, sufficient indictment without certain specified allegations. *Evitt*, 23 A. 532, 98 S. E. 737.

Adultery, evidence authorized conviction of. *Conner*, 3 A. 475, 60 S. E. 111; *Chatman*, 8 A. 842, 70 S. E. 188; *Sanders*, 13 A. 654, 79 S. E. 745; *Cummings*, 14 A. 441, 81 S. E. 366; *Ramsey*, 16 A. 218, 84 S. E. 984; *Brown*, 18 A. 30, 88 S. E. 710; *Nash*, 21 A. 76, 94 S. E. 60; *Stamper*, 21 A. 798, 95 S. E. 266. Circumstances warranting conviction; former cases discussed. *O'Neal*, 15 A. 486, 83 S. E. 861.

Evidence not warranting conviction. *Phillips*, 17 A. 824, 88 S. E. 716; *Winkles*, 4 A. 560, 563, 61 S. E. 1128;

Thompson, 5 A. 7, 62 S. E. 571; *Long*, 5 A. 176, 62 S. E. 711; *Moore*, 8 A. 113, 68 S. E. 616; *Glover*, 15 A. 44, 82 S. E. 602; *Bailey*, 12 A. 529, 77 S. E. 652.

Circumstances negating claim of woman that she was raped. *Avery*, 12 A. 562, 77 S. E. 892. Proper charge to jury as to consent, etc. *Ib.*

Reopening case to allow proof of necessary allegation of indictment, not error. *Chatman*, 8 A. 842, 70 S. E. 188.

Admissibility of prior conduct as tending to show sexual intercourse. *Lipham*, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Charge to jury, if they believe the parties "were in bed together, that would be a circumstance that would authorize them to convict," no error. *Radford*, 7 A. 600, 67 S. E. 707.

Defendant's belief that he was divorced, no defense, when. *Jackson*, 21 A. 824, 95 S. E. 631.

Evidence of previous relations of parties in another county is admissible to prove. *Nobles*, 127/213, 56 S. E. 125.

Evidence slight and unsatisfactory, but sufficient to uphold verdict. *Brewton*, 9 A. 827, 72 S. E. 280. Proof of marriage by repute. *Miller*, 9 A. 827, 72 S. E. 279.

Incestuous, conviction of, not sustained by uncorroborated testimony of accomplice. *Solomon*, 113/192, 38 S. E. 332.

Incestuous; woman consenting, accomplice, though some force was used; admissibility of testimony as to prior whippings. *Whidby*, 121/588, 49 S. E. 811.

Living in state of, not shown by proof of single act. *Lawson*, 116/571, 42 S. E. 752.

Living in state of adultery or fornication not shown by proving merely one act or occasional acts. *Winkles*, 4 A. 559, 61 S. E. 1128.

No fatal variance between indictment and proof as to name of woman with whom committed. *Walker*, 14 A. 587, 81 S. E. 797.

Name of woman alleged to be "Maria," proved to be "Marie," no material variance. **Watkins**, 18 A. 500, 89 S. E. 624.

Not shown without proof that both parties were married persons. **Tison**, 125/7, 53 S. E. 809; **Elliott**, 125/31, 53 S. E. 809. Testimony that one "claims to be a married man," has no probative value. **Tison**, 125/7, 53 S. E. 809.

Marriage of both parties must be proved, to convict of; marriage not shown by reputation, without proof of cohabitation. **Zackery**, 6 A. 104, 64 S. E. 281.

Marriage not shown by reputation, cohabitation, and defendant's statement made a year before the alleged adultery. **Craft**, 13 A. 79, 78 S. E. 776. Circumstances authorizing inference of. **Smith**, 13 A. 242, 79 S. E. 51.

Good character of alleged participant, relevant on trial of the other party. **Glover**, 15 A. 44, 82 S. E. 602.

Living in state of, may be proved on trial for adultery, though a different offense. **Sadford**, 7 A. 600, 67 S. E. 707. Living in state of fornication, not proved by one or more acts: additional evidence sufficient here. **Singletary**, 7 A. 699, 67 S. E. 1046.

Participant's wife incompetent witness against the woman, and incompetent to make affidavit as basis for warrant, or sign accusation against her. **Smith**, 14 A. 614, 81 S. E. 912; **Bell**, 14 A. 809, 82 S. E. 376.

Statement of church committee, that from investigation they "thought there was something in it," inadmissible. **Webb**, 6 A. 353, 64 S. E. 1001.

Testimony that alleged participant "looked mightily embarrassed" when discovered in a suspicious situation, admissible. **Glover**, 15 A. 45, 82 S. E. 602.

The woman's intercourse with others than the man on trial for, immaterial. **Connell**, 9 A. 818, 72 S. E. 304. Female witness not impeachable by proof of specific acts of intercourse. *Ib.*

When not shown by proof of sleeping in same room. **Lightner**, 126/563, 55 S. E. 471. Conviction warranted. **Balkcom**, 126/571, 55 S. E. 477.

Whether husband or wife of one with whom the adultery is charged to have been committed may testify to the fact of marriage, on trial for. **Thomas**, 115/235, 41 S. E. 578.

Blackmail by accusing or threatening to accuse of. **Cook**, 22 A. 770, 772, 97 S. E. 258.

By wife separated from husband and suing him for divorce, not justify husband's assault on her. **Baird**, 9 A. 232, 70 S. E. 990.

Assault on account of, or to prevent it; no error in charge of court as to. **Jordan**, 14 A. 433, 434, 81 S. E. 359.

Intercourse to which the female does not consent, not adultery or fornication. **Nephew**, 5 A. 841, 63 S. E. 930.

Incestuous adultery and fornication with unmarried stepdaughter; conviction of adultery and fornication set aside. **Nephew**, 5 A. 841, 63 S. E. 930.

Conviction of adultery and fornication set aside with direction that defendant be held to await action by grand jury, where evidence showed rape or incest. **Nephew**, 5 A. 841, 63 S. E. 930.

Conviction of adultery and fornication warranted by circumstantial evidence here. **Johnson**, 119/446, 46 S. E. 634.

Error in charge of court as to adultery and fornication. **Echols**, 119/307, 46 S. E. 409.

Evidence sufficient to convict of adultery and fornication. Evidence of reputation of woman and of house, when admissible. **Sutton**, 124/815, 53 S. E. 381. Offense seldom provable by direct evidence. *Ib.* 820.

Though force used, and female resists for a time, adultery and fornication. **Mathews**, 101/547, 29 S. E. 424. **Affray**, acts constituting; not constituted by words alone. **Blackwell**, 119/314, 46 S. E. 432.

Conviction not upheld, where the fighting was not shown to have been at public place. What constitutes a public place. *Gamble*, 113/701, 30 S. E. 301.

Defense unduly restricted by charge of court. *Bracewell*, 10 A. 830, 74 S. E. 440.

Whether accused was justified for part taken in, a question for the jury. *Blackwell*, 119/314, 46 S. E. 432.

Agency in liquor-selling. *Cunningham*, 104/676, 31 S. E. 585. Relevancy of testimony offered to show agency for buyer. *Silver*, 105/838, 32 S. E. 22.

For buyer, not disproved by alleged agent's non-disclosure of name of person from whom liquor was obtained. *Cain*, 8 A. 435, 69 S. E. 578.

For buyer, not seller, shown; conviction of keeping for unlawful sale, set aside. *Cain*, 8 A. 433, 69 S. E. 578. Circumstances sufficient to show consent of employer to sale by employee, though forbidding it. *Groves*, 8 A. 690, 70 S. E. 93.

For buyer, evidence showing. *Williams*, 107/696, 33 S. E. 641. See *Billups*, 107/766, 33 S. E. 659.

For buyer of liquor and seller's name appearing, conviction of unlawful sale illegal. *Shaw*, 3 A. 607, 60 S. E. 326.

For person in other State where the act would be lawful, no defense. *Arthur*, 146/827, 831, 92 S. E. 637.

To sell liquor not shown by buying it for another with his money and delivering it to him. *Evans*, 101/781, 29 S. E. 40.

For buyer, not seller; presumption that one receiving money and delivering whisky was seller; effect of his failure to produce witness alleged by him to be the seller. *Williams*, 5 A. 97, 62 S. E. 671.

Name of agent not necessary in indictment alleging that defendant contracted to sell, etc., personally and by agent. *Cashin*, 18 A. 87, 88 S. E. 996.

Unlawful sale by agent. *Southern Express Co.*, 6 A. 31, 64 S. E. 341; *Loeb*, 6 A. 23, 64 S. E. 338. Middleman in liquor sale. *Sessions*, 6 A. 336, 64 S. E. 1101.

Unlawful sale of liquor by agent; conviction of principal. *Rooney*, 117/709, 45 S. E. 72.

Taking orders for sale of intoxicating liquors in county where law prohibits sale, punishable, whether orders taken by one acting as principal or agent. *Loeb*, 115/241, 41 S. E. 575.

Aiding and abetting homicide; conviction as principal in second degree of voluntary manslaughter. *McDonald*, 23 A. 125, 97 S. E. 448.

Alcohol, as ingredient of beverages, medicinal preparations, etc., when prohibition law not violated by use of. *Roberts*, 4 A. 207, 60 S. E. 1082.

Prescribing unlawfully. *Gaskins*, 17 A. 807, 88 S. E. 592.

Alteration of writing. See catchword "Forgery," *infra*.

Arrest, assault on officer making; when not justifiable. *Smith*, 10 A. 36, 72 S. E. 527.

By city policeman, outside jurisdiction of city, not authorized; conviction of false imprisonment upheld. *Coker*, 14 A. 606, 81 S. E. 818.

Assault by officer not justified by opprobrious words of prisoner. *Dixon*, 12 A. 18, 76 S. E. 794.

Arson (burning storehouse); evidence to establish corpus delicti and to corroborate confession. *Morgan*, 120/499, 48 S. E. 238. Title or occupancy, sufficient proof of. *Ib.* 502.

Attempt to commit, facts showing. *Weaver*, 116/550, 42 S. E. 745.

Allegation that house was occupied, sufficiently proved by evidence as to prior occupancy, and flight of prior occupants from the house at time of fire. *Williams*, 11 A. 416, 75 S. E. 442.

Circumstances not showing felonious burning, and not connecting accused. *Ragland*, 2 A. 492, 58 S. E. 689.

Evidence authorizing conviction. *Flannigan*, 13 A. 663, 79 S. E. 745; *Dixon*, 11 A. 367, 75 S. E. 266; *Dur-*
rett, 11 A. 803, 76 S. E. 364; *Brown*, 6
A. 357, 64 S. E. 1119; *Rice*, 16 A. 128,
84 S. E. 609; *Wade*, 16 A. 166, 84 S.
E. 593; *Sutton*, 17 A. 713, 88 S. E.
122, 587; *Curry*, 17 A. 377, 87 S. E.
685; *Ware*, 18 A. 107, 89 S. E. 155;
Wright, 19 A. 618, 91 S. E. 928; *Abdal-*
lah, 20 A. 618, 93 S. E. 260; *Ware*,
118/752, 45 S. E. 615; *Edge*, 8 A. 125,
68 S. E. 623.

Evidence insufficient to warrant con-
viction of. *Ross*, 109/516, 35 S. E.
102; *Boatwright*, 103/430, 30 S. E.
256; *Green*, 111/139, 36 S. E. 609;
Gaither, 119/118, 45 S. E. 973; *Kin-*
sey, 12 A. 422, 77 S. E. 369; *Williams*,
17 A. 316, 86 S. E. 734; *Hurt*, 18 A.
110, 88 S. E. 901.

Circumstances sufficient to corrobo-
rate accomplice. *Harrell*, 121/607, 49
S. E. 703.

No conviction of burning barn, on
mere extra-judicial confession of ac-
cused. *Bines*, 118/320, 45 S. E. 376,
68 L. R. A. 33.

Corpus delicti not proved, conviction
set aside. Confession induced by prom-
ises, no basis for conviction. *DeVore*,
7 A. 197, 66 S. E. 484.

Confession corroborated by circum-
stances proving corpus delicti. *Sutton*,
17 A. 713, 88 S. E. 122, 587.

Corpus delicti proved by circum-
stances. *Sutton*, 17 A. 713, 88 S. E.
122, 587; *Hurt*, 18 A. 110, 88 S. E.
901. Presumption that burning was
accidental. *Ib.* Court not required
to charge as to this presumption, with-
out request. *Robinson*, 18 A. 394, 89
S. E. 434.

Corpus delicti, not provable by con-
fession alone. *Moon*, 12 A. 514, 77 S.
E. 1088; *Sutton*, 17 A. 713, 88 S. E.
122, 587; *Sims*, 14 A. 28, 79 S. E. 1133.

Evidence as to tracks and other cir-
cumstances did not authorize convic-
tion. *Williams*, 123/278, 51 S. E. 344.

Fire alone proved, accident presum-
ed. *Williams*, 125/741, 54 S. E. 661.
Ill-will to owner, as circumstance.
Rice, 16 A. 132, 84 S. E. 609.

Indictment need not charge whether
outhouse located in city, town or vil-
lage. Location affects punishment.
Carter, 106/372, 32 S. E. 345, 71 Am.
St. R. 262.

Of country church. *Carter*, 106/375,
32 S. E. 345, 71 Am. St. R. 262.

Offense not so much against the prop-
erty as against the security of the house.
Harrell, 121/607, 49 S. E. 703; *Rice*,
16 A. 128, 84 S. E. 609.

Of house other than that charged, on
same night, when admissible as evi-
dence. *Chapman*, 112/56, 37 S. E.
102.

Of mill; conviction of accessory be-
fore the fact, on corroborated testimony
of accomplice. *Chapman*, 112/56, 37
S. E. 102.

Of occupied dwelling-house, though
family all absent therefrom. *Meeks*,
102/572, 27 S. E. 679.

Of outhouse by burning freight-car
body used as warehouse in town,
though not appurtenant to other build-
ing. *Carter*, 106/373, 32 S. E. 345,
71 Am. St. R. 262.

Ownership of house, allegation as
to, sustained by proof of occupancy
under claim of right. *Rice*, 16 A. 128,
84 S. E. 609; *Harrell*, 121/607, 49 S.
E. 703.

Ownership properly laid in one to
whom conveyance was executed as se-
curity, when. *Kinsey*, 12 A. 422, 77 S.
E. 369. Inaccurate charge to jury as
to what is a "village," in law as to
arson, harmless. *Ib.*

Possession of stolen goods, as a cir-
cumstance tending to show guilt; omis-
sion of court to charge as to recency
of possession. *Sharpe*, 105/588, 31 S.
E. 541.

Presumption of accidental burning.
Matthews, 10 A. 302, 73 S. E. 404;

Childs, 10 A. 829, 74 S. E. 89; Rice, 16 A. 128, 84 S. E. 609; Wade, 16 A. 166, 84 S. E. 593.

Presumption of accidental burning not rebutted, and evidence insufficient as to motive; conviction set aside. Matthews, 10 A. 302, 73 S. E. 404. Corpus delicti must be shown by evidence aliunde confession or incriminatory admission. Childs, 10 A. 829, 74 S. E. 89.

Presumption that the burning was accidental; corpus delicti not shown without proof of wilful burning; conviction based alone on extra judicial confession set aside. West, 6 A. 105, 64 S. E. 130. See Burley, 6 A. 776, 65 S. E. 816. Proof of corpus delicti. Brown, 6 A. 357, 64 S. E. 119.

Presumption that the burning was accidental, not rebutted. Davenport, 12 A. 102, 76 S. E. 756; Barrett, 12 A. 508, 77 S. E. 652; Sims, 12 A. 551, 77 S. E. 891; Moon, 12 A. 614, 77 S. E. 1088; Sims, 14 A. 28, 79 S. E. 1133. See Sevier, 17 A. 277, 86 S. E. 533.

Omission to charge jury as to presumption, in absence of request, not require new trial. Sutton, 17 A. 713, 88 S. E. 122, 587.

Proved by direct testimony, presumption of accidental burning overcome. Randall, 3 A. 653, 60 S. E. 328.

Second verdict of guilty stands, though evidence weak. Miller, 1 A. 134, 57 S. E. 909.

Threat reasonably capable of being applied to person whose house was burned, admitted in evidence. Harris, 17 A. 723, 88 S. E. 121.

Tracks, as circumstance; cases collected. Wade, 16 A. 163, 84 S. E. 593; Aiken, 17 A. 721, 88 S. E. 210; Harris, 17 A. 723, 88 S. E. 121. Motive. *Ib.* 724.

Verdict of, on circumstantial evidence, upheld. Meeks, 103/420, 30 S. E. 252.

Whether declaration amounted to admissions as to. Allred, 126/537, 5b S. E. 178.

V. II—12.

Asporation; what sufficient. Waller, 23 A. 157, 97 S. E. 876.

Assault because of charges made against sister. Renfro, 8 A. 676, 70 S. E. 70.

By father to protect son engaged in quarrel, what necessary to justify. Kimberly, 4 A. 853, 62 S. E. 571.

On wife by husband. Tolbert, 16 A. 311, 85 S. E. 267.

By husband on finding his wife in a compromising situation with another man, while separated from the husband and suing for divorce. Baird, 9 A. 232, 70 S. E. 990.

By officer, not justified by opprobrious words of prisoner. Dixon, 12 A. 18, 76 S. E. 794. In defense of brother, law as to, not applicable to facts here. Nobles, 12 A. 355, 77 S. E. 184.

By one of posse attempting arrest, justified by attack of other members of posse. Perry, 8 A. 181, 68 S. E. 864.

By one pointing pistol which he was prevented from using; provocation affording basis for conviction of manslaughter. Barrett, 14 A. 807, 82 S. E. 371.

By parent on young man suspected of improper conduct or motives towards daughter, not justified by evidence. Jordan, 14 A. 430, 81 S. E. 359.

By shooting in direction of another. Smallwood, 9 A. 300, 70 S. E. 1124.

By unauthorized or unreasonable corporal punishment of convict by warden in charge. Westbrook, 133/578, 66 S. E. 788, 18 Ann. Cas. 295.

Charge of court as to, not applicable to the case, harmless error here. Tinsley, 4 A. 613, 62 S. E. 93.

Circumstances equivalent to, reducing grade of homicide to manslaughter. Rumsey, 126/420, 55 S. E. 167.

Civil action for, not barred by acquittal. Beckworth, 6 A. 859, 65 S. E. 1075.

Concurrent with that of accused, on same person, proof as to. Smith, 126/804, 55 S. E. 1024.

Conviction based on hearsay, set aside. Morris, 5 A. 139, 62 S. E. 711.

Conviction of, not authorized, when accused raised stick and threatened to use it, facts justifying him. *Shubert*, 127/42, 55 S. E. 1045.

Definitions of. *Edwards*, 4 A. 168, 60 S. E. 1033.

Drawing pistol was not, under facts here. *Burton*, 109/134, 34 S. E. 286.

Evidence, on trial for, requiring charge to jury on theory of accident. *Conoly*, 10 A. 822, 74 S. E. 285.

Evidence warranting conviction of. *Price*, 118/60, 44 S. E. 820; *Robinson*, 118/750, 45 S. E. 620; *Shelton*, 15 A. 341, 83 S. E. 152. *Res gestæ* of. *Carter*, 15 A. 343, 83 S. E. 153.

Evidence weak and inconclusive, sufficient to support verdict. *Smallwood*, 9 A. 300, 70 S. E. 1124.

Evidence showing battery, not support conviction, where mere assault is charged. *Carter*, 7 A. 44, 65 S. E. 1072. But no variance where assault was alleged in indictment for riot, and evidence showed battery. *Ib.*

Failure to prosecute in municipal court for disorderly conduct, irrelevant, on trial for. *Butler*, 10 A. 463, 73 S. E. 685.

Fault of defendant in provoking attack on himself; proper form of charge to jury as to; when error to charge as to. *Bennett*, 19 A. 442, 91 S. E. 889; *Davis*, 14 A. 766, 82 S. E. 297. *Swain*, 15 A. 449, 83 S. E. 642.

Impulse of passion no excuse, unless it results from grave and serious circumstances, suddenly and in a manner supposed to be irresistible. *McKinley*, 121/193, 48 S. E. 917.

In attempt to frighten. *Smallwood*, 9 A. 300, 70 S. E. 1124.

Meaning of "battery," and "violence." *Yarborough*, 17 A. 830, 88 S. E. 710.

Not justified by grand juror's questions; no error in so charging jury. *Nobles*, 12 A. 355, 77 S. E. 184. Not justified by words not used in presence of assailant. *Ib.* 358.

Not shown by mere preparation, without attempt. *Gaskin*, 105/632, 31 S. E. 740; *Groves*, 116/520, 42 S. E. 755, 59 L. R. A. 598.

Not shown by preparation therefor, accompanied by threats, profanity, etc. *Penny*, 114/77, 39 S. E. 871. Blow inflicted in anger is. *Heard*, 114/94, 38 S. E. 989.

On officer approaching to arrest without warrant; evidence warranting conviction. *Smith*, 10 A. 37, 72 S. E. 527.

On one villifying sister's reputation; sufficiency of provocation a jury question, when. *Farmer*, 7 A. 688, 67 S. E. 834.

Opprobrious words, not justify assault with deadly weapon; such assault may be resisted with deadly weapon, if necessary. *Crawley*, 7 A. 95, 66 S. E. 273.

Party provoking, not deprived of right of self-defense, when. *Reddick*, 11 A. 150, 74 S. E. 901; *Coleman*, 121/599, 49 S. E. 594.

Prior quarrels between the parties, admissible to show motive and malice. *Smallwood*, 9 A. 300, 70 S. E. 1124.

Proof of child's declarations as to, insufficient to convict, when. *Williams*, 11 A. 662, 75 S. E. 988.

Right of brother to protect sister from. *Helms*, 138/827, 831, 76 S. E. 353.

Words as justification for. *Crawley*, 7 A. 95, 66 S. E. 273; *Dorsey*, 7 A. 368, 66 S. E. 1096; *Farmer*, 7 A. 688, 67 S. E. 834; *McKinney*, 119/468, 469, 46 S. E. 719.

Accused not justified in battery for opprobrious words, if he used first such words. *Folds*, 23 A. 147, dissent, 148, 97 S. E. 872.

Words as justification for, must have been used in presence of accused at time of. *Berry*, 105/683, 31 S. E. 592.

Words as justification for, not include written word. *Haygood*, 10 A. 394, 73 S. E. 423.

Words as justification for; not justify assault by adult on child nine years old. *McKinley*, 121/193, 48 S. E. 917.

Words not justify, when not used in presence of assailant. *Cowart*, 9 A. 169, 70 S. E. 891.

Words used to daughter of accused in his absence, not justify, when. *Walker*, 117/323, 43 S. E. 737.

To prevent adultery, evidence did not support theory of. *Yopp*, 131/593, 62 S. E. 1036.

Verdict of, may be rendered under indictment for assault with intent to murder. *Daly*, 9 A. 205, 70 S. E. 966. Verdict not illegal, though in committing the assault the defendant was also guilty of riot, or of shooting at dwelling-house. *Id.*

What necessary to constitute. *Dorsey*, 107/56, 33 S. E. 415; *Dorsey*, 108/479, 34 S. E. 135.

Acquittal of, no bar to civil action. *Powell*, 125/823, 54 S. E. 732. Words as provocation for. *Mathews*, 125/50, 54 S. E. 196. What necessary to constitute. *Williams*, 125/236, 54 S. E. 186.

When committed, and when not, by shooting in the direction of another, not to hit, but only to frighten. *Edwards*, 4 A. 167, 849, 60 S. E. 1033; 62 S. E. 565.

When complete in law, though consummation prevented. *Rutherford*, 5 A. 482, 63 S. E. 570.

Whether words were justification for assault and battery, a jury question. *Patterson*, 14 A. 120, 80 S. E. 213. Threats tending to show motive for, admitted in evidence. *Early*, 14 A. 467, 81 S. E. 385.

With fist, not justify stabbing, unless in case of great inequality between the combatants. *McEvoy*, 123/506, 51 S. E. 500.

Consummated by complete battery will not sustain verdict for simple assault. *Harris*, 3 A. 457, 60 S. E. 127.

With intent, not found on evidence of actual consummation. *Jackson*, 132/547, 64 S. E. 653; *Brantley*, 132/578, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203; *Canada*, 130/15, 60 S. E. 104.

See. catchwords, **Assault and battery**, **Assault with intent to murder**; **Assault with intent to rape**; **Shooting**.

Assault and battery, by beating with pocket-knife; conviction unsupported by evidence. *Johnson*, 127/277, 56 S. E. 420.

Abusive language as defense to prosecution for. *Samuels*, 104/4, 29 S. E. 427.

By officer upon prisoner; conviction sustained. Conversation part of *res gestæ*. Force necessary to effect arrest, lawful. Not justified by abusive language. Not allowed to chastise prisoner. *Moody*, 120/868, 48 S. E. 340.

By putting hand on woman to gain her consent to sexual intercourse. *Glover*, 23 A. 520, 98 S. E. 553.

Conviction demanded by evidence; alleged errors immaterial. *Davis*, 11 A. 804, 76 S. E. 391.

Conviction of, under accusation of stabbing, proper when. *Hollis*, 13 A. 307, 79 S. E. 85. Words as justification for. *Binder*, 13 A. 383, 79 S. E. 216.

Conviction of, under indictment for assault to rape. *Bell*, 103/401, 30 S. E. 294, 68 Am. St. R. 102; *Mitchell*, 6 A. 554, 65 S. E. 326. See *Smalls*, 6 A. 502, 65 S. E. 295.

When not legally found under indictment for assault with intent to rape. *Goldin*, 104/549, 30 S. E. 749.

Conviction of, under indictment for assault to rape, not charging battery, not proper. *Owens*, 9 A. 441, 71 S. E. 680.

Disproportioned to insult, not justified. *Moore*, 102/581, 27 S. E. 675; *Bedford*, 5 A. 462, 63 S. E. 515.

Erroneous conviction of disorderly conduct on showing of, how corrected. *Hicks*, 144/403, 87 S. E. 415.

Evidence warranting conviction. **Lambert**, 8 A. 206, 68 S. E. 882; **Brantley**, 10 A. 24, 72 S. E. 520.

Conviction of assault on charge of, set aside, where evidence demanded finding of battery. **Kennedy**, 10 A. 794, 74 S. E. 95.

Finding of, on trial for assault with intent to murder, if facts so warrant. **Heard**, 114/90, 39 S. E. 909.

Grimaces and facial expressions of contempt no justification for. **Behling**, 110/754, 36 S. E. 85.

In resisting one who was attempting to prevent erection of fence on land claimed by him; relevant testimony as to title. **Zoucks**, 19 A. 744, 92 S. E. 228.

Not committed by chastisement of child in presence of mother and by her authority, when. **Harris**, 115/578, 41 S. E. 983.

Not justified by prior (not contemporaneous) injury to person, family, or property. **Cole**, 2 A. 734, 59 S. E. 24.

Not legally justified by insulting note sent to assailant's daughter in his absence on preceding day. **Jackson**, 4 A. 852, 62 S. E. 539.

On woman by placing hands on her, etc. **Morrow**, 18 A. 12, 88 S. E. 911.

Opprobrious words as justification for. **Berkner**, 116/954, 43 S. E. 463, 94 Am. St. R. 98; **Cole**, 2 A. 734, 59 S. E. 24; **Scott**, 4 A. 75, 60 S. E. 803. Threats of violence, not necessarily opprobrious or abusive. **Kimberly**, 4 A. 853, 62 S. E. 571.

Reasonable fears of defendant, when considered. **Dannenberg**, 118/888, 4b S. E. 682.

What words justify. **Haygood**, 137/168, 73 S. E. 81.

When committed in resisting illegal arrest. **Harris**, 21 A. 792, 95 S. E. 268.

When not committed by "whipping-boss" whipping chain-gang convict. **McDonald**, 6 A. 339, 64 S. E. 1108.

When not found under evidence on trial for assault with intent to murder. **Robinson**, 118/45, 45 S. E. 804.

When not involved on trial for assault to murder. **Howard**, 2 A. 830, 59 S. E. 89.

When proper to charge jury as to, where indictment is for stabbing. **Collier**, 115/19, 23, 41 S. E. 261.

When words do not justify. **Samuels**, 103/3, 29 S. E. 427.

Where, if death had resulted, the offense would have been manslaughter. **Jenkins**, 3 A. 146, 59 S. E. 435.

With large pistol, when abusive language no defense for. **Sutton**, 2 A. 659, 58 S. E. 1108.

Unlawful seizure of hand, with proposal to go and commit crime. **Tiller**, 101/782, 29 S. E. 424.

By man laying his hand on the hand of a woman (his sister-in-law), after proposing sexual intercourse. **Yarborough**, 17 A. 828, 88 S. E. 710.

Character, battery in defense of. **Farmer**, 7 A. 688, 67 S. E. 834.

Definition of battery. **Badger**, 5 A. 479, 63 S. E. 532; Battery defined; may be committed by unlawful imposition of hands or arms, in pushing, though not causing hurt. **Lowry**, 8 A. 379, 69 S. E. 34. Evidence thereof shows more than mere assault. **Harris**, 3 A. 457, 60 S. E. 127. Battery by slight touch without hurt. **Cole**, 2 A. 734, 59 S. E. 24. Battery included in rape; not necessarily in assault to rape. **Goldin**, 104/549, 30 S. E. 749. When no error in omitting to charge jury as to battery, on trial for assault to rape. **Roberts**, 9 A. 810, 72 S. E. 287. Words as justification for battery. **Berry**, 105/683, 31 S. E. 592.

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Abortion as constituting. **Sullivan**, 121/183, 48 S. E. 949; **Barrow**, 121/187, 48 S. E. 950.

Accidentally shooting one while shooting at another, whether assault with intent to murder, under indictment

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charging intent to murder the person actually shot. *Hamilton*, 14 A. 118, 80 S. E. 223.

Allegations that knife used was weapon likely to produce death must be proved; how shown. *Paschal* 125/279, 54 S. E. 172.

Arresting officer, assault on, to murder. *Earl*, 124/28, 52 S. E. 78; *Porter*, 124/297, 52 S. E. 283, 2 L. R. A. (N. S.) 730.

Assault and battery, no error in not charging on. *Daly*, 9 A. 205, 70 S. E. 966.

Automobile run over person in road. *Dennard*, 14 A. 485, 81 S. E. 378. Recklessness may be equivalent of specific intent to kill. *Ib.*

Beating resulting in death. *Howard*, 2 A. 830, 59 S. E. 89.

With rock, assault with intent to murder. *Little*, 3 A. 442, 60 S. E. 113.

Biting another's finger, whether justification for use of deadly weapon; instructions as to, considered. *Love*, 14 A. 49, 50, 80 S. E. 209.

Bystander's remark to person assaulted that the assailant was trying to kill him with a gun, admitted in evidence. *Dunham*, 8 A. 668, 70 S. E. 111.

Charge on mutual combat and voluntary manslaughter, when not error. *Pollard*, 124/100, 52 S. E. 149.

Conviction sustained. *Eckman*, 23 A. 393, 98 S. E. 187; *Carson*, 23 A. 535, 98 S. E. 817.

Error in charging jury as to assault to murder, harmless where accused was convicted of shooting at another. *Tipton*, 8 A. 92, 68 S. E. 614; *Harris*, 120/167, 47 S. E. 520.

Incorrect charge as to defendant's contention. *Broughton*, 9 A. 820, 72 S. E. 276.

Proper instructions as to *Napper*, 123/571, 51 S. E. 592; *Mixon*, 123/581, 51 S. E. 580, 107 Am. St. R. 149; *Hearn*, 22 A. 272, 95 S. E. 939; *Reddick*, 11 A. 150, 74 S. E. 901. Error in charge. *Wright*, 6 A. 572.

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65 S. E. 360. Charge not error. *Frazier*, 112/868, 869, 38 S. E. 349; *Baldwin*, 120/188, 47 S. E. 558.

Error in not charging jury as to assault to murder, under facts in homicide case. *Pope*, 13 A. 711, 79 S. E. 909.

Child in womb, using instrument to destroy; indictment sufficient, as to accessory before the fact; evidence not sufficient. *Snell*, 13 A. 158, 79 S. E. 71.

Assault to murder pregnant woman, by using instrument to destroy child, evidence not sufficient to convict of. *Brown*, 125/8, 53 S. E. 767.

Circumstantial evidence not warranting conviction. *Coleman*, 15 A. 343, 83 S. E. 154.

Conviction on, may be upheld though no motive for the offense be apparent. *Prater*, 16 A. 296, 85 S. E. 204.

Consent to verdict of guilty with recommendation, effect of. *Spear*, 17 A. 540, 87 S. E. 826.

Conspiracy to commit, evidence showing. *Kirksey*, 11 A. 142, 74 S. E. 902.

Instructions to jury as to, on trial of one charged with assault with intent to murder in the second degree, considered. *Bolton*, 21 A. 184, 94 S. E. 95.

Conviction authorized; charge to jury on offense of shooting at another, harmless; law as to fears of a reasonable man not applicable to facts here, no error in not charging as requested on theory of innocence. *Burnham*, 18 A. 708, 90 S. E. 378.

"Cooling time," error in charge of court as to. *Wimberly* 12 A. 541, 77 S. E. 879.

Death from shooting, in case of, no issue of assault to murder. *Clements*, 141/667, 81 S. E. 1117.

Intent to kill not presumed where death did not ensue. *Fallon*, 5 A. 659, 63 S. E. 806.

In absence of instruction that specific intent to kill must be shown,

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court erred in charging that to authorize a conviction the jury must find all the elements which, if there had been a killing, would be required to show murder. *Wiggins*, 13 A. 314, 80 S. E. 724.

Error in charging jury that they could convict if the offense would have been murder had death resulted; not cured by subsequent correct charge. *Wimberly*, 12 A. 540, 77 S. E. 879.

Proper and improper instructions as to requirement that act should have been murder had death ensued. *Burris*, 2 A. 418, 58 S. E. 545; *Dawson*, 2 A. 637, 58 S. E. 1065.

Instruction requiring that intent be shown should be given to jury where they are charged as to their being authorized to convict if the offense would have been murder had death resulted; proper instructions. *Taylor*, 17 A. 794, 88 S. E. 696.

Definition of, in charge of court, not subject to the objection that the necessary ingredient of malice was excluded. *Killian*, 19 A. 750, 92 S. E. 227.

Description of offense as "assault with intent to kill." *Vaughan*, 113/11, 38 S. E. 352.

Evidence warranting conviction. *Gaines*, 6 A. 501, 65 S. E. 302; *Fews*, 1 A. 123, 58 S. E. 64; *Fouraker*, 4 A. 694, 62 S. E. 116; *Walker*, 8 A. 456, 69 S. E. 601; *Kendrick*, 9 A. 170, 70 S. E. 891; *Williams*, 9 A. 202, 70 S. E. 964; *Gaskins*, 12 A. 97, 76 S. E. 777; *Cook*, 12 A. 220, 76 S. E. 1078; *Brown*, 12 A. 642, 77 S. E. 922; *Phinazee*, 22 A. 258, 95 S. E. 878; *Ogletree*, 22 A. 628, 96 S. E. 1049; *Wimberly*, 13 A. 671, 79 S. E. 767; *Hopkins*, 119/569, 46 S. E. 835; *Williams*, 125/235, 54 S. E. 186; *Smith*, 125/300, 54 S. E. 124; *Tyre*, 112/224, 37 S. E. 374.

Weak, but sufficient to authorize inference as to intent to kill. *Cunningham*, 17 A. 591, 87 S. E. 843.

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Unsatisfactory, but conviction upheld. *Nelson*, 4 A. 226, 60 S. E. 1072.

Not authorizing conviction. *Crumley*, 5 A. 231, 62 S. E. 1005. Evidence weak, but sufficient. *Martin*, 5 A. 606, 63 S. E. 605.

Showing assault to murder, may support verdict for shooting at another. *Wolfe*, 2 A. 684, 58 S. E. 1119.

Food which was not eaten, putting broken glass in, with intent to kill. is not assault to murder. *Leary*, 13 A. 626, 79 S. E. 584; *Leary*, 14 A. 797, 82 S. E. 471.

Form of verdict, charge as to, not intimation of guilt. *Turner*, 20 A. 166, 92 S. E. 975.

Former quarrel not too remote to be relevant, here. *Jackson*, 18 A. 683, 90 S. E. 368.

Identification of assailant by circumstances. *Morris*, 12 A. 810, 78 S. E. 477; *Hawthorne*, 12 A. 811, 78 S. E. 473.

Intent to kill inferable from circumstances. *Bevill*, 17 A. 819, 88 S. E. 717.

May be presumed from stabbing in back with pocket-knife. *Lott*, 18 A. 748, 90 S. E. 727.

Not necessarily shown by use of deadly weapon in manner likely to produce death. *Ripley*, 7 A. 679, 67 S. E. 834. See *Powell*, 7 A. 744, 67 S. E. 1048; *Lewis*, 14 A. 504, 81 S. E. 378.

Must be proved, and is question for jury. An erroneous charge. *Duncan*, 1 A. 118, 58 S. E. 248.

Must be proved; error in instruction that jury could convict if assault was committed as charged and if the offense would have been murder had death resulted. *McAllister*, 7 A. 541, 67 S. E. 221.

Not presumed where death does not ensue. *Gaskin*, 11 A. 11, 13, 74 S. E. 554, 555; *Moore*, 11 A. 259, 74 S. E. 1102; *Wimberly*, 12 A. 540, 77 S. E. 879; *Gaynor*, 12 A. 604, 77

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S. E. 1072; **Posey**, 22 A. 97, 95 S. E. 325; **Taylor**, 17 A. 787, 88 S. E. 696; **Hunter**, 10 A. 832, 74 S. E. 553.

Circumstances authorizing inference of. **Lovett**, 9 A. 232, 70 S. E. 989.

Evidence showing want of, conviction of shooting at another upheld. Erroneous charge to jury, where harmless. **Harris**, 120/167, 47 S. E. 520.

Assault with deadly weapon and with malice, not resulting in death, is not an assault with intent to murder, without the specific intent found. **Lanier**, 106/368, 32 S. E. 335.

Error in not charging jury that the specific intent to take life is essential element of the offense. **McLane**, 20 A. 285, 93 S. E. 558.

Specific intent must be found by jury, and may be inferred from facts and circumstances. **Burris**, 2 A. 418, 58 S. E. 545; **Howard**, 2 A. 830, 59 S. E. 89.

Specific intent to kill must be shown. Error in not charging jury on assault and battery. **Posey**, 22 A. 97, 95 S. E. 325.

Proper instructions as to intent to kill. **Butler**, 12 A. 642, 77 S. E. 1130. Sufficiency of evidence to show such intent. **Gaynor**, 12 A. 604, 77 S. E. 1072.

Specific intent essential; no conviction of principal in second degree unless he aided in act and participated in murderous design. **Kimball**, 112/541, 37 S. E. 886.

Whether intent shown by threats and pointing of gun, should have been submitted to jury, with instructions requested. **Jackson**, 103/417, 30 S. E. 251.

Intoxication as affecting intent. **Gaynor**, 12 A. 606, 607, 77 S. E. 1072.

Malice, proper charge as to. **Shelton**, 11 A. 148, 74 S. E. 846.

Manslaughter, facts not requiring charge on. **Duhart**, 18 A. 287, 89 S. E. 343.

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Court not required to charge jury on law of, where the evidence and the defendant's statement made a case of either assault with intent to murder or justification. **Ferguson**, 17 A. 811, 88 S. E. 589.

Instruction on offense of stabbing rendered unnecessary instructions on law of manslaughter, in absence of request. **Hearn**, 22 A. 272, 95 S. E. 939.

Murder, omission to give definition of, in charge to jury, not error, in view of other instructions. **Caudle**, 7 A. 848, 68 S. E. 343. **Assault to murder, in homicide case.** **Baynes**, 7 A. 816, 68 S. E. 309.

Newly discovered evidence requiring new trial. **Moore**, 11 A. 259, 74 S. E. 1102.

Opinion as to facts, not expressed in charge. **Whitsett**, 115/203, 41 S. E. 699.

Charge of court as to manner of use of weapon, intimation in, as to facts; ground for new trial. **Harrison**, 20 A. 159, 92 S. E. 970.

Other acts of violence than that charged, admissibility of testimony as to. **Coleman**, 15 A. 343, 83 S. E. 154.

Poison, administration of, not effected unless the intended victim partook of it. **Leary**, 14 A. 797, 82 S. E. 471. See catchword "Well," *infra*.

Presumption from use of deadly weapon. **Harrison**, 20 A. 159, 92 S. E. 970; **Posey**, 22 A. 97, 95 S. E. 325; **Harrell**, 22 A. 104, 95 S. E. 537.

Of malice, when arises and when not; intent to kill not presumed, where death did not ensue. **Adams**, 125/11, 53 S. E. 804. See **Shockley**, 125/778, 54 S. E. 692.

Of malice, where defendant admitted stabbing. **Bevill**, 17 A. 819, 88 S. E. 717.

Reasonable fears, instruction as to, not pertinent, but not prejudicial. **Gaskins**, 12 A. 97, 76 S. E. 777.

Recklessness may be equivalent to intent to kill. **Dennard**, 14 A. 485, 81 S. E. 378.

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Recommendation, refusal to regard, not reviewable. *Gaskins*, 12 A. 97, 76 S. E. 777.

Proper instruction as to jury's right to recommend misdemeanor punishment; no error in omitting charge that court could ignore recommendation. *Gaskins*, 12 A. 97, 76 S. E. 777.

Rock, assault to murder by throwing. *Smith*, 10 A. 37, 77 S. E. 527.

Assault with intent to murder not committed by wantonly throwing into street-car occupied by passengers. *Bray*, 118/786, 45 S. E. 597.

Separate assaults made with deadly weapons, and death resulting, assault with intent to murder and assault and battery in issue; evidence not demanding finding of conspiracy or common design. *Bayes*, 135/219, 69 S. E. 170.

Assault to murder not legally found, on trial for murder, as to separate and independent assault just before fatal shot by another jointly accused. *Smith*, 127/262, 56 S. E. 360.

Shooting officer to prevent illegal arrest is prima facie not assault with intent to murder. *Jenkins*, 3 A. 146, 59 S. E. 435.

Into riotous mob invading premises, when not assault to murder. *Rhodes*, 10 A. 68, 72 S. E. 518.

Into house at night; circumstances authorizing conviction. *Morris*, 12 A. 810, 78 S. E. 477.

Shooting one approaching with ax. *Prator*, 8 A. 436, 69 S. E. 496.

Shooting at another, error in not charging as to offense of. *Broughton*, 9 A. 820, 72 S. E. 276.

Proper charge as to offense of. *Gaskins*, 12 A. 97, 76 S. E. 777.

In case of conviction of, omission to charge jury that in order to convict a specific intent to kill must be proved, no ground for new trial. *Coleman*, 15 A. 338, 83 S. E. 154.

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Conviction of, not warranted, under indictment for assault to murder, when. *Kendrick*, 113/759, 39 S. E. 286.

Offense of, distinguished from assault to murder. *Hunter*, 10 A. 832, 74 S. E. 553.

Assault to murder mitigated to. *White*, 3 A. 608, 60 S. E. 287; *Reese*, 3 A. 610, 60 S. E. 284.

Stabbing, omission to charge on, not prejudicial error. *Jones*, 12 A. 133, 76 S. E. 1070.

Error in not charging jury on. *Lewis*, 14 A. 503, 81 S. E. 378.

On account of blow with hand or fist, not necessarily assault to murder. *Heard*, 114/90, 39 S. E. 909.

Statement of accused showing premeditated design by her to kill on account of past ill treatment, verdict of guilty, without regard to rulings complained of. *Wood*, 119/426, 46 S. E. 658.

Sole defense, defendant's statement that she acted in self-defense; proper instructions to jury. *Thornton*, 18 A. 745, 90 S. E. 489.

Variance not material between allegata and probata as to manner of using rocks in assault. *Varner*, 6 A. 785, 65 S. E. 841.

Weapon, likely to kill, and intent to kill, insufficient evidence as to assault with. *Mathews*, 104/497, 30 S. E. 727; *Meriwether*, 104/500, 30 S. E. 806. Omission to charge jury that the weapon used must be deadly, not require new trial, in view of facts here. *Merritt*, 19 A. 616, 91 S. E. 885. See catchword, **Weapon**.

Well, assault to murder not shown by putting poison in; not committed unless the intended victim drink of the water. *Peebles*, 101/585, 28 S. E. 920.

Words, menaces, etc., charge as to, error. *Clay*, 124/795, 53 S. E. 179.

Assault to murder with deadly weapon, provoked by opprobrious words only. *Nixon*, 101/574, 28 S. E. 971.

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Wound, deadly character of weapon, and intent to kill, shown by nature of. *Nelson*, 4 A. 223, 60 S. E. 1072.

Assault with intent to rape, conviction unwarranted here. *Jackson*, 113/612, 38 S. E. 941.

Code definition not necessary, as to. *Williams*, 15 A. 306, 82 S. E. 938.

Conviction set aside because court failed to charge as to assault and battery. *Sutton*, 123/125, 51 S. E. 316.

Conviction authorized by evidence. *Mathews*, 4 A. 336, 61 S. E. 292; *Patterson*, 4 A. 513, 61 S. E. 881; *Carter*, 121/360, 49 S. E. 280; *Parker*, 3 A. 336, 59 S. E. 823; *Scott*, 3 A. 479, 60 S. E. 112; *Moss*, 5 A. 698, 63 S. E. 719; *Daniel*, 5 A. 819, 63 S. E. 939.

Corroboration of woman, not essential, where offense charged is assault. *Rivers*, 8 A. 703, 70 S. E. 50.

Delay in making complaint, as ground for attacking good faith of prosecution. *Bennett*, 102/656, 29 S. E. 918.

Evidence authorizing a finding that there was an assault with intent to gain consent to sexual intercourse, but not to commit rape. *Sutton*, 123/125, 51 S. E. 316.

Evidence unsatisfactory. *Rogers*, 101/561, 28 S. E. 978.

Evidence unsatisfactory, but authorized conviction. *Webb*, 7 A. 35, 66 S. E. 27. Circumstances not exclusive of other hypothesis; conviction set aside. *Gaines*, 7 A. 397, 66 S. E. 1099.

Evidence warranting conviction. *Mitchell*, 14 A. 420, 81 S. E. 254. Conviction of such assault, as to one of joint defendants legal, though on joint trial the other was convicted of assault and battery. *Moore*, 14 A. 472, 81 S. E. 363.

Evidence not altogether satisfactory, but verdict not set aside. *Williams*, 15 A. 306, 82 S. E. 938. Complaints of female, when admissible, and when not. *Id.* 306.

Capacity to consent to sexual intercourse. *Morrow*, 13 A. 189, 79 S. E. 63.

Capacity to consent, materiality of; especially as concerning female of unsound mind. *Cooper*, 2 A. 731, 59 S. E. 20.

Mental capacity of young person to consent. *Morrow*, 13 A. 189, 79 S. E. 63.

Evidence not sufficient as to intent, conviction set aside. *Horseford*, 124/784, 53 S. E. 322.

"Felonious assault" on woman; these words too indefinite to show assault to rape. *Huey*, 7 A. 405, 66 S. E. 1023.

Admission by accused that he had "ruined" woman, not confession of assault to rape. *Huey*, 7 A. 405, 66 S. E. 1023.

Indictment sufficient, evidence insufficient. Dissent: evidence for jury. *Jackson*, 114/861, 40 S. E. 989.

Three elements of; evidence insufficient for conviction. *Dorsey*, 108/477, 34 S. E. 135.

Trial for, may involve submission of law of assault, or of assault and battery. *Fields*, 2 A. 41, 58 S. E. 327; *Mitchell*, 6 A. 554, 65 S. E. 326.

Former trial for assault and battery, as bar to prosecution. *Bell*, 103/397, 30 S. E. 294, 68 Am. St. R. 102.

Not legally found from evidence of rape. *Welborn*, 116/522, 42 S. E. 773. Conviction of simple assault under, if evidence so authorize. *Duggan*, 116/846, 43 S. E. 253.

Not shown by solicitation and seizure, lack of present intent to rape being manifest. *Tiller*, 101/782, 29 S. E. 424.

Overt act amounting to assault must be shown to authorize conviction of; evidence here insufficient. *Gaskin*, 105/632, 31 S. E. 640.

Under indictment for, conviction of assault and battery may be had. *Bell*, 103/397, 30 S. E. 294, 68 Am. St. R. 102.

New trial required because of error, in admitting testimony as to admission of defendant's father, though introduced only for impeachment. *McKay*, 17 A. 397, 87 S. E. 158.

Insanity as defense. *Wilson*, 9 A. 274, 70 S. E. 1128.

Not shown by indecent assault with intent to indulge passion, but without intent to have sexual intercourse. *Smalls*, 6 A. 505, 65 S. E. 295.

No error in not charging jury as to simple assault, when. *Owens*, 9 A. 444, 71 S. E. 680.

Opinion as to what proved, not intimidated by charge of court. *Wade*, 11 A. 411, 412, 75 S. E. 494. Omission to charge on law of assault, or assault and battery, not error, under facts here. *Ib.*

The word "effort," in charge to jury, held to imply a physical act, and to be equivalent to "attempt." *Marshall*, 20 A. 72, 92 S. E. 552. Charge that the State must show that "the act of the defendant" constituted an attempt, etc., was not an intimation that an act had been proved. *Ib.*

Committed by making assault to induce to consent to sexual intercourse by girl under age of consent. *Gibson*, 10 A. 117, 72 S. E. 944.

Assault to rob, not shown to have been committed in the manner alleged in the indictment, conviction set aside. *Erwin*, 117/296, 43 S. E. 719.

Attempt to wreck a train, whether offense was, or obstructing railroad, a jury question. *Hobbs*, 8 A. 53, 68 S. E. 515.

To sell will not uphold conviction of selling. *Fleming*, 106/361, 32 S. E. 338.

To make whisky, conviction of, under indictment for manufacturing, was authorized. *Terry*, 18 A. 313, 89 S. E. 378.

Of larceny (of hog); evidence warranting conviction. *Tinker*, 125/743, 54 S. E. 662.

To entice away laborer, conviction of, authorized, though the attempt was unsuccessful. *Bright*, 4 A. 333, 61 S. E. 289.

Automobile; assault by running over person. *Tift*, 17 A. 663, 88 S. E. 41.

Operating, on highway while intoxicated. *Burch*, 18 A. 290, 89 S. E. 341.

Assault to murder, by running over person. *Dennard*, 14 A. 485, 81 S. E. 378. Unauthorized use of. *Hill*, 14 A. 410, 81 S. E. 248.

Bailiffs, who are, under Penal Code, § 189.

Rice, 6 A. 161, 64 S. E. 575; *Finkelstein*, 105/620, 31 S. E. 589.

Who indictable for larceny after trust. *McCrary*, 11 A. 787, 76 S. E. 163.

Indictable for larceny after trust, under Penal Code, § 188, are not merely those of classes named, or of like kind. *Belt*, 103/12, 29 S. E. 451.

Bank insolvency defined. Constitutionality of law as to punishment for. *Griffin*, 142/636, 637, 83 S. E. 540, 55 L. R. A. 1915C, 716, 41 Ann. Cas. 1916C, 80.

When criminal; "insolvency" defined; sufficient indictment; presumption of fraud constitutional. *Griffin*, 15 A. 522, 83 S. E. 891.

Meaning of "insolvency." *Spence*, 20 A. 66, 92 S. E. 555. Criticism of former decisions. *Ib.* Admissible evidence on trial of director. *Ib.* 62, 63, 64. Solvency or insolvency is a matter admitting of opinion evidence. *Ib.* 63.

Of chartered bank, conviction of president for. *Griffin*, 18 A. 402, 89 S. E. 625. Judicial cognizance that bank was chartered. *Ib.* 403.

Presumption of fraud; refusal to review decisions as to. *Stapleton*, 19 A. 37, 90 S. E. 1029.

Proof of insolvency authorized conviction. *Spence*, 20 A. 64, 92 S. E. 555.

Bank officers; P. C. 1895, § 214, as to loans to themselves, etc., applies only to banks of issue. *Thornton*, 5 A. 397, 63 S. E. 301.

Acceptance of deposit after insolvency of bank. *Griffin*, 12 A. 617, 77 S. E. 1080.

Bastard, concealment of death of. *McLoud*, 122/393, 50 S. E. 145.

Bastardy. Ability of woman's father to support his family, irrelevant. *Tolbert*, 12 A. 686, 78 S. E. 131. Refusal to

give bond, announced by counsel for accused, treated as refusal by accused. **Tolbert**, 12 A. 689, 78 S. E. 131.

Admissibility of evidence as to specific instances of sexual intercourse between mother of bastard and other men than the defendant. **Rudolph**, 16 A. 353, 85 S. E. 365.

Affidavit by mother sufficient. Demand of magistrate for bond, and refusal, shown by parol; better practice is to enter these facts on the warrant. **Watts**, 12 A. 350, 77 S. E. 206.

Affidavit to institute proceeding must be by mother, not officer. **Craft**, 21 A. 258, 94 S. E. 281.

Bad reputation of mother of bastard; as to chastity, no error in excluding testimony as to; former decisions discussed. **Rudolph**, 16 A. 353, 85 S. E. 365.

Bond, what required in proceeding begun after end of mother's confinement by birth of child; lying-in expenses not included. **Thomason**, 18 A. 331, 89 S. E. 436. Warrant not excluded from evidence because sworn out 16 days after birth. *Ib.*

Certiorari does not lie on errors of justice in requiring security and binding over for. **Strickland**, 148/820, 98 S. E. 471; **23 A. 532**, 98 S. E. 740.

Conviction of, not supported by refusal to give "\$750 bond for education and maintenance of the child." **Johnson**, 102/613, 29 S. E. 916.

Conviction authorized by evidence. **Garrett**, 20 A. 749, 93 S. E. 232. Character of mother of bastard, inadmissible testimony as to. *Ib.* 750-1.

Conviction warranted. **Welborn**, 8 A. 388, 69 S. E. 27; **Carter**, 8 A. 471, 69 S. E. 588; **Tolbert**, 12 A. 686, 78 S. E. 131.

Corroboration of prosecutrix's testimony, not necessary. **Kennedy**, 9 A. 226, 70 S. E. 986. Newly discovered evidence not requiring new trial. *Ib.* 220.

Entries on warrant for, made by magistrate presiding at preliminary hearing, admissible as original evidence

on trial under indictment. **McCalman**, 121/491, 49 S. E. 609.

Essentials of the offense; immaterial that the child was begotten in rape; probability of child becoming chargeable to county, not involved on trial under indictment for. **Kennedy**, 9 A. 219, 70 S. E. 986.

Evidence weak and unsatisfactory, but sufficient. **Veasey**, 6 A. 208, 64 S. E. 709.

Fine, convict can not interfere as to remnant of, where child dies. **Thigpen**, 138/606, 75 S. E. 643.

Issuance of more than one warrant, irrelevant. **Tolbert**, 12 A. 686, 78 S. E. 131. Birth of another bastard, irrelevant. **Tolbert**, 12 A. 686, 78 S. E. 131.

Issuance of warrant for, and arrest thereunder, do not make criminal case; settlement not illegal. **Jones**, 117/58, 43 S. E. 417.

Juror subject to challenge on trial for, because he was on jury that tried same defendant for fornication with the child's mother, on evidence which would be introduced in the bastardy case. **Bullard**, 14 A. 478, 81 S. E. 369.

Mother's abandonment of prosecution for seduction, or defendant's acquittal on that charge, immaterial. **Tolbert**, 12 A. 685, 78 S. E. 131.

No charge or case against one bound over for, until accusation or indictment preferred. **Williamson**, 1 A. 657, 57 S. E. 1079.

No error in charge of court giving code provisions as to bond. **Pittman**, 22 A. 255, 95 S. E. 940.

No error in giving in charge § 682 of Penal Code (1910). **Thomason**, 18 A. 331, 89 S. E. 436. Proper charge to jury. *Ib.*

No legal conviction of, for refusing to secure for expense of lying in, board, nursing, and maintenance of mother. **Sullivan**, 114/520, 40 S. E. 704.

No material error in allowing child's mother to testify as to her love for the accused, and his love for her. **Wilcox**, 19 A. 83, 90 S. E. 1032.

Order on failure to give bond, what sufficient; sufficient though the word "failed" was used instead of "refused;" failure to give bond when required was equivalent to refusal. **Rudolph**, 16 A. 353, 85 S. E. 365.

Order requiring bond given "in terms of the law," without naming the sum or stating to whom payable, valid. **Tolbert**, 12 A. 685, 78 S. E. 131. Order on refusal to give bond, what sufficient. *Id.*

Pregnancy at time of trial, immaterial; no error in excluding proof of. **Rudolph**, 16 A. 353, 85 S. E. 365.

Prosecution begun before birth, bond must cover lying-in expenses; aliter where begun after child born and mother well. **Martin**, 127/39, 56 S. E. 79.

Prosecution may be settled by written promise to pay money for support of child and dismissal of warrant. **Gresham**, 2 A. 71, 58 S. E. 309.

Resemblance of child and the accused, witnesses not allowed to testify to; but exhibition of child itself was not error here. Cases cited. **Sims**, 16 A. 211, 84 S. E. 976; **McCalman**, 121/491, 49 S. E. 609.

Strict compliance with statute is required in bastardy proceedings. **Craft**, 21 A. 258, 94 S. E. 281.

Testimony as to promise of accused before sexual intercourse, and as to message sent to him in regard to the pregnancy, irrelevant. **McCalman**, 121/491, 49 S. E. 609.

Testimony that accused had been tried for seduction of the mother of the child, and found guilty of fornication, irrelevant. **McCalman**, 121/491, 49 S. E. 609.

Testimony that a third person had said that he was the father of the child, not admissible. **Kennedy**, 9 A. 223, 70 S. E. 986.

Warrant not invalid because of direction as to magistrate before whom putative father was to be brought. **Tolbert**, 12 A. 685, 78 S. E. 131.

Beer; judicial notice taken that lager beer is an intoxicating malt liquor. **Cripe**, 4 A. 832, 62 S. E. 567.

Betting on future market prices, races, etc. **Anderson**, 2 A. 1, 22, 25, 58 S. E. 401.

On horse-race is gaming. **Thrower**, 117/753, 45 S. E. 126.

Where consummated, when parties reside in different States. Distinct from keeping gaming-house. **Jones**, 120/186, 47 S. E. 561.

Facts constituting bet. **DeFlorin**, 121 594, 49 S. E. 699, 104 Am. St. R. 177. **Bigamy**; belief as to right to marry, no excuse, when. **Jackson**, 21 A. 824, 95 S. E. 631.

Belief that prior marriage was dissolved, as defense to. **Wilson**, 108/279, 33 S. E. 975.

By marrying, or going through prescribed form of marriage. Cohabitation not an element, but a different offense. Limitation period for prosecution. **Pitts**, 147/801, 95 S. E. 706, 22 A. 247, 95 S. E. 935.

By remarriage in less than five years after absence began, though under belief that wife is dead. **Parnell**, 126/103, 54 S. E. 804.

Conviction of, demanded; first marriage shown by proof of admission by accused. **McSein**, 120/175, 47 S. E. 544.

Declarations of husband and wife pending cohabitation, admissible as part of *res gestæ*. **Oliver**, 7 A. 697, 67 S. E. 886.

Defense that alleged first marriage was void because the defendant already had a lawful wife, not sustained by evidence. **Brown**, 16 A. 604, 85 S. E. 951. Sufficiency of proof of marriage. *Id.* 604, 605.

Defined. **McBride**, 16 A. 245, 85 S. E. 86.

Defined; may be committed by two married persons. **Allen**, 17 A. 432, 87 S. E. 681.

Error in admitting testimony as to defendant's cruelty to first wife. *Robinson*, 6 A. 97, 710, 65 S. E. 792. Conduct of persons present at trial, prejudicial to defendant. *Ib.* 697, 704.

Evidence sufficient to convict. *Sewell*, 10 A. 451, 73 S. E. 607.

First marriage shown by proof of admission by accused (answer in divorce suit, not denying marriage). *Oliver*, 7 A. 695, 77 S. E. 886.

Husband "gone six years," and in chain-gang when last heard from, not presumed dead. Presumption of continuance of life for seven years. *Pitts*, 22 A. 247, 95 S. E. 935.

Lawful prior marriage presumed *prima facie* on proof of married state. *Oliver*, 7 A. 697, 67 S. E. 886. Identity of person, issue as to; newly discovered evidence not requiring new trial. *Ib.* 698.

Marriage of defendant not proved by certificate as to marriage of a person of the same name, without further identification. *Brown*, 16 A. 604, 85 S. E. 951.

Meaning of "absence." *Robinson*, 6 A. 701, 65 S. E. 792. Belief that former marriage was dissolved by divorce granted to spouse, a good defense, when. *Ib.* 702.

One marrying after five years' absence from his wife, without information of her fate, is required to show he used reasonable diligence to get such information. *Robinson*, 6 A. 699, 700, 65 S. E. 792.

Plea of former acquittal, when not sustained. *Gully*, 116/527, 42 S. E. 790.

Presumption of marriage, from cohabitation and repute, will not prevail over subsequent marriage in fact by one of the parties to a third person. *Brown*, 16 A. 604, 85 S. E. 951.

Prosecution not barred by statute of limitations, proof as to absence from the State being sufficient. *Hulsey*, 11 A. 258, 74 S. E. 1099.

Repute, as evidence of first marriage. *Oliver*, 7 A. 698, 67 S. E. 886.

Sufficiency of proof as to marriage, presumption as to death of absent spouse. *Grand Lodge*, 9 A. 71, 70 S. E. 678.

Time and place of prior marriage need not be alleged. Woman of second marriage a competent witness. First marriage may be established by admissions of accused. Legality of first marriage. *Murphy*, 122/149, 50 S. E. 48.

Billiard or pool table, allowing minor to play on, without parent's consent, distinct from municipal offense of admitting minor to billiard or pool room. *Reeves*, 114/851, 40 S. E. 1008.

Keeping of, for hire, shown by circumstances. *Beatty*, 15 A. 515, 83 S. E. 885.

Boisterous or other disorderly indecent conduct, when punishable. *Coleman*, 3 A. 298, 59 S. E. 829.

Borrower's theft. *Munn*, 12 A. 479, 77 S. E. 591. When simple larceny, not larceny from house. *Rice*, 6 A. 160, 64 S. E. 575.

Conversion of borrowed article, when larceny. *Abrams*, 121/171, 48 S. E. 965.

Bucket-shop case. Boykin law violated, and gaming-house kept. *Anderson*, 2 A. 1, 22, 25, 58 S. E. 401.

Burglary.

Accessory, rulings as to evidence and charge of court on trial of one charged as. *Braxley*, 17 A. 197, 86 S. E. 425.

Accomplice testifying against accused, circumstances here were not sufficient to corroborate. *Baldwin*, 16 A. 174, 84 S. E. 727.

Testimony of, established burglary; corroboration by aliunde evidence connecting accused with act. *Woods*, 127/41, 55 S. E. 1044.

Not sufficiently corroborated by circumstances. *Baker*, 14 A. 578, 81 S. E. 805.

Corroboration of, insufficient here (making key, etc.). *Bishop*, 9 A. 205, 70 S. E. 976.

Burglary—(Continued.)

Articles connected with crime as evidence. *Baxley*, 17 A. 197, 86 S. E. 425.

"Breaking" effected by pulling staples by which the wire screen in a window was fastened. *Simmons*, 18 A. 104, 88 S. E. 904.

Error in omitting mention of, as element of burglary, in charging jury. *Strickland*, 12 A. 640, 77 S. E. 1070.

Burglary, and breaking and entering, defined and distinguished. *Evans*, 146/98, 90 S. E. 743.

What breaking constitutes burglary, as to apartment or room, and as to private dwelling-house. Breaking out is not burglary. *Lockhart*, 3 A. 480, 60 S. E. 215.

Charge of court as to burglary, argumentative and tending to discredit statement of accused. *Daniel*, 17 A. 774, 88 S. E. 694.

As to sufficient breaking, and recent possession of stolen goods, considered. *Scott*, 122/139, 50 S. E. 49.

No harm to accused in inaccurate instruction to jury that the indictment (for burglary by breaking and entering with intent to commit larceny) charged him with carrying away money. *Evans*, 19 A. 68, 90 S. E. 1025.

Codefendant, testimony of, not sufficiently corroborated to uphold conviction. *Courson*, 21 A. 153, 94 S. E. 53.

Common-law and statutory definitions of. *Hutchins*, 3 A. 301, 59 S. E. 848.

Corpus delicti not proved, conviction set aside. *Thomas*, 8 A. 95, 68 S. E. 522.

Established by proof that the house was thus broken and entered and articles of value were stolen from it. *Simmons*, 18 A. 104, 88 S. E. 904.

Circumstances sufficient as to. *Garnett*, 10 A. 114, 72 S. E. 951.

Election between counts of indictment;

Burglary—(Continued.)

when not required of State. *Braxley*, 17 A. 197, 86 S. E. 425.

Evidence as to burglary in place of business adjoining that in question, while the accused was under arrest, rejected. *August*, 11 A. 799, 76 S. E. 164.

Weak and unsatisfactory, but sufficient to uphold verdict. *Strickland*, 11 A. 417, 75 S. E. 491; *Peterson*, 6 A. 491, 65 S. E. 311; *Lewis*, 120/508, 48 S. E. 227.

Burglary under § 146 of the Penal Code of 1910 (not misdemeanor under § 179) was shown by testimony as to one with his head and part of body in window of office of gin-house into which he had broken, and with hand in cash drawer and holding bag of money, when interrupted. *Evans*, 19 A. 68, 90 S. E. 1025.

Inadmissible testimony as to illness of woman in room when it was entered by burglar; and as to identification of the accused by placing him in the window through which the house was entered. *Aiken*, 16 A. 848, 86 S. E. 1076.

Conviction warranted. *Peterson*, 19 A. 144, 91 S. E. 223; *Waters*, 3 A. 649, 60 S. E. 335; *Jenkins*, 2 A. 684, 58 S. E. 1115; *Staples*, 4 A. 649, 62 S. E. 95; *Jackson*, 6 A. 778, 65 S. E. 842; *Anthony*, 6 A. 784, 65 S. E. 816; *Butts*, 14 A. 821, 82 S. E. 375; *Ellison*, 15 A. 518, 83 S. E. 867; *Smith*, 16 A. 691, 85 S. E. 973; *Harrison*, 20 A. 12, 92 S. E. 388; 95 S. E. 630; *Conklin*, 21 A. 399, 94 S. E. 600; *Davis*, 22 A. 119, 95 S. E. 474; *Jones*, 105/649, 31 S. E. 574; *Davis*, 105/808, 32 S. E. 158; *Holland*, 112/540, 37 S. E. 887; *Jordan*, 119/443, 46 S. E. 679; *Bickers*, 120/172, 47 S. E. 515; *McElroy*, 125/37, 53 S. E. 759; *Lowe*, 23 A. 83, 97 S. E. 444; *Throckmorton*, 112, 97 S. E. 664; *Tolliver*, 131, 97 S. E. 624.

Conviction not warranted. *Calhoun*, 9 A. 501, 71 S. E. 765; *Davis*,

Burglary—(Continued.)

17 A. 820, 88 S. E. 706; *Levister*, 21 A. 50, 93 S. E. 513; *Reynolds*, 22 A. 552, 96 S. E. 499; *Andrews*, 116/83, 42 S. E. 476; *Cannon*, 12 A. 637, 77 S. E. 920; *Clements*, 4 A. 271, 61 S. E. 132; *Smith*, 5 A. 833, 63 S. E. 917; *Baker*, 14 A. 578, 81 S. E. 805. Not warranted by testimony of accomplice, and proof as to tracks and other circumstances here. *Smith*, 7 A. 781, 68 S. E. 335.

"Home," burglary of, inferred to be of dwelling-house. *Williams*, 2 A. 394, 58 S. E. 549.

Identification of goods taken, what sufficient. *Jordan*, 119/443, 46 S. E. 679.

Of perpetrator, circumstance insufficient for. Dissent; sufficient. *Glover*, 114/828, 40 S. E. 998.

Identity of article found in defendant's possession, with stolen article (razor), not shown, conviction set aside. *Rayfield*, 5 A. 816, 63 S. E. 920.

Indictment not sustained, charging one as principal; others as accessories after the fact, in that they received the stolen property. *Smiley*, 23 A. 317, 98 S. E. 125.

Juvenile-court act no bar to trial for burglary, in superior court, of one under sixteen years of age. *Hicks*, 146/706, 92 S. E. 216; *Hicks*, 20 A. 61, 92 S. E. 558.

Commitment of infant to reformatory by juvenile court is no trial for burglary. *Williams*, 147/491, 94 S. E. 564.

Larceny from house, conviction of, under indictment for burglary. *Ray*, 121/189, 48 S. E. 903; *Thomas*, 18 A. 101, 88 S. E. 917.

Whether proved, immaterial where the accused was convicted of burglary, under an indictment charging both offenses. *Tabor*, 17 A. 754, 88 S. E. 410.

Count for, properly included in indictment; general verdict of guilty construed as applying to the higher offense. *Scott*, 14 A. 806, 82 S. E. 376.

Burglary—(Continued.)

Not charging jury on, in burglary case, no error, when. *Bloodworth*, 9 A. 161, 70 S. E. 892.

Conviction of, when legal, where burglary proved. *Green*, 119/120, 45 S. E. 990.

Lifting latch and opening bolted window, and effecting entrance as to upper part of body, but prevented from going further, burglary by. *White*, 7 A. 596, 67 S. E. 705.

Loss of property does not show the breaking and entering. *Lester*, 106/371, 32 S. E. 335.

Of articles not named in indictment, when error to admit evidence as to. *Hawkins*, 6 A. 109, 64 S. E. 289.

Meaning of "place of business," in statute as to. *Keenan*, 10 A. 792, 74 S. E. 297; *Jones*, 12 A. 814, 815, 78 S. E. 474. Not committed by breaking and entering cottonseed warehouse not in use as a place of business. *Wright*, 12 A. 813, 77 S. E. 657.

Of "within the curtilage of the dwelling-house;" when not include outhouse used for domestic purposes. *Wright*, 12 A. 514, 77 S. E. 657.

Newly discovered evidence, conviction set aside on. *Howell*, 5 A. 612, 63 S. E. 600.

Opening door not locked or fastened, by bolt or lock, and entering thereby, is "breaking." *Bloodworth*, 9 A. 161, 70 S. E. 892.

Opinion that accused unlocked door, error in intimation of. *Strickland*, 12 A. 640, 77 S. E. 1070.

Outhouse considered part of dwelling-house within its "protection," rule applied where public road ran between unfenced corn-crib and dwelling of its owner and breaking of corn-crib could be heard and seen from dwelling. *Parks*, 22 A. 621, 96 S. E. 1050.

Conviction for burglary of, not authorized where house (barn or crib) is not within curtilage of dwelling. *Hutchins*, 3 A. 300, 59 S. E. 848.

Burglary—(Continued.)

Ownership of property laid in husband, supported, though he had promised to give it to his wife, without delivering it. *Andrews*, 106/393, 32 S. E. 341.

Laid in husband, title proved in wife, when no variance. *Kidd*, 101/528, 28 S. E. 990.

Place where intoxicating liquors and other goods were sold was "place of business," with meaning of code. *August*, 11 A. 798, 76 S. E. 164. **Meaning of "place of business."** *Keenan*, 10 A. 792, 74 S. E. 297.

Possession of stolen goods, as incriminating circumstance; error in not charging jury as to explanation of possession. *Mayfield*, 17 A. 115, 86 S. E. 284.

As circumstance to show burglary. *Jones*, 105/649, 31 S. E. 574; *McElroy*, 125/37, 53 S. E. 759; *Lester*, 106/371, 32 S. E. 335. **Charge of court considered.** *Peterson*, 6 A. 491, 65 S. E. 311.

As evidence of guilt; honest account required. *Davidson*, 104/761, 30 S. E. 946.

Not satisfactorily explained, sufficient to convict, where the corpus delicti is established. *Scott*, 14 A. 806, 82 S. E. 376.

Not satisfactorily explained, may authorize finding of burglary; but it does not create a legal presumption and is not necessarily proof of guilt. *Gravitt*, 114/841, 40 S. E. 1003, 88 Am. St. R. 63.

Facts not authorizing charge as to, in the case of a minor. *Sparks*, 111/830, 35 S. E. 654.

Error in charging jury as to, where evidence did not identify the goods. *Brantley*, 115/229, 41 S. E. 695.

Explained, and evidence insufficient to convict. *Williams*, 125/268, 54 S. E. 166.

Presumption from. *August*, 11 A. 798, 76 S. E. 164.

Presumption from, is not one of law, but matter of inference for jury. *Cuthbert*, 3 A. 600, 60 S. E. 322.

Burglary—(Continued.)

Explanation consistent with innocence. *Waters*, 3 A. 652, 60 S. E. 335.

Presumption from, error in omitting element of recency in charging jury as to, harmless, in view of undisputed facts. *Rayfield*, 10 A. 48, 72 S. E. 515.

Other than those described in indictment, circumstantial evidence as to. *Walker*, 5 A. 430, 63 S. E. 534. **Conviction based on, set aside, in view of uncontradicted evidence which showed that the accused may have been guilty merely of receiving stolen goods.** *Hampton*, 6 A. 778, 65 S. E. 816.

Proper charge to jury as to burden of explanation. *Barlow*, 17 A. 728, 88 S. E. 212.

Accounted for by unimpeached evidence, conviction based on such possession set aside. *Gibbs*, 8 A. 107, 68 S. E. 742.

Whether sufficiently explained, a jury question. *Bridges*, 9 A. 235, 70 S. E. 968.

Principal in second degree of burglary, by standing and watching. *McWhorter*, 118/55, 44 S. E. 873.

In second degree, indicted as principal in first degree, may be found guilty generally. *Lofton*, 121/172, 48 S. E. 908.

Requirement as to conviction of, before trial of accessory, complied with, where one of joint principals was previously convicted. *Braxley*, 17 A. 197, 86 S. E. 425.

Receiving stolen goods, evidence showing guilt of, burglary not proved. *Gravitt*, 114/841, 40 S. E. 1003, 88 Am. St. R. 63.

Specific article, charge of burglary with intent to steal, not supported without proof that this article was, or that accused had reason to believe it was, in the house broken. *Rush*, 114/113, 39 S. E. 941.

Statute of limitation, proof that a store was "recently" burglarized, held to refer to time within. *Hawkins*, 17 A. 315, 86 S. E. 735.

Burglary—(Continued.)

Venue of burglary, on question of, place of possession of stolen goods is immaterial *Peterson*, 6 A. 491, 65 S. E. 311.

Verdict guilty of "misdemeanor," on indictment for burglary, no basis for judgment. *Smith*, 117/16, 43 S. E. 440.

Burying ground, injury to inclosure or fixture in; conviction authorized without proof of strict legal title. *Drew*, 18 A. 34, 88 S. E. 716.

Camp-ground, vending within a mile of place of worship in. *Neely*, 20 A. 83, 92 S. E. 542. Code-section as to, not confined to vending, etc., in camp-ground. *Ib.* When not applicable to business conducted within the prescribed limits. *Ib.*

Carrier's delivery of intoxicating liquors, where prohibition law prevails, not criminal, when. *Southern Express Co.*, 107/670, 33 S. E. 637, 46 L. R. A. 417, 73 Am. St. R. 146.

Cattle; branding or altering mark. *Lawrence*, 10 A. 786, 74 S. E. 300.

Cattle stealing; identity of cattle sufficiently proved. *Dean*, 6 A. 250, 64 S. E. 671.

When not committed by stealing dead cow. *Hunter*, 13 A. 651, 79 S. E. 752.

Chain-gang unlawful, immaterial on trial of convict for murder of guard. *Perry*, 110/238, 36 S. E. 781.

Cheating and Swindling.

Accusation charging representation that another had promised to pay, not supported by proof of representation that he had promised to become security. *Fambrough*, 113/934, 39 S. E. 324.

Advertisement, procuring, in name of Brotherhood of Trainmen; conviction set aside because evidence did not show use of "deceitful means or artful practice" to defraud, and showed no actual or pecuniary loss. *Hay*, 7 A. 407, 66 S. E. 984.

Agent of the firm, proof that the representations were made to, not admitted. *V. II*—13.

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sible. *McLendon*, 16 A. 263, 85 S. E. 200.

Allegation that the accused "knew" that the representations were false must be supported by proof. *McLendon*, 16 A. 263, 85 S. E. 200.

That representation was made to one member of firm, not supported by evidence that it was made to another member. *Broznack*, 109/514, 35 S. E. 123.

That A was defrauded, not supported by proof that B furnished goods to defendant and charged them to A's account, on false representation of defendant, and that A paid the account and thereby suffered loss. *Oliver*, 15 A. 452, 83 S. E. 641.

Attempt, conviction of. authorized by evidence. *Foss*, 15 A. 478, 83 S. E. 880.

Bank, not cashier, was party defrauded here, though the money was obtained from him and he afterwards paid the bank. *O'Neal*, 10 A. 474, 73 S. E. 696.

Belief of seller that he was giving full value, immaterial, when. *Crawford*, 4 A. 789, 62 S. E. 501.

Charge of court properly based on § 703, not § 719, of Penal Code. *McNulty*, 21 A. 783, 95 S. E. 304.

As to attempts, sufficient, in absence of request for further instruction. *Foss*, 15 A. 478, 83 S. E. 880.

Sufficiently full as to intent to defraud. *McNulty*, 21 A. 783, 95 S. E. 304.

Request for, error in not complying with. *Formby*, 14 A. 596, 81 S. E. 799.

Check, worthless, obtaining money on, not cheating and swindling without representation as to fund to pay the check, or that it would be paid on presentation; indictment not alleging such representation, fatally defective. *Williams*, 10 A. 395, 73 S. E. 424.

Offense under Penal Code, § 719, not committed by obtaining money

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by forged check in fictitious name; this act is a felony covered by § 249. *Sharp*, 7 A. 605, 67 S. E. 699.

Circumstantial evidence here, as to fraudulent intent, as consistent with innocence as with guilt, conviction set aside. *Laster*, 4 A. 804, 62 S. E. 508.

Contract, obtaining possession under; immaterial that contract was not legally binding. *Morse*, 9 A. 428, 71 S. E. 699.

Obtaining money by false statement as to part performance of. *Williams*, 8 A. 583, 70 S. E. 47.

Conviction warranted though the deceitful means, etc., charged were not the sole inducement that caused the person defrauded to part with his property. *Braxton*, 117/703, 45 S. E. 64.

Corporation, etc., false representations as to; evidence as to nonexistence of corporation a short time after such representations, admitted, as a circumstance tending to show previous nonexistence. *Mitchell*, 17 A. 325, 86 S. E. 737.

Crime complete when the property was obtained. *Oliver*, 15 A. 452, 83 S. E. 641; see *Lowe*, 111/650, 36 S. E. 856.

Definition of cheating and swindling. *Foster*, 8 A. 119, 68 S. E. 739. Not committed by obtaining thing on false promise alone; representation must relate in part and materially to past or present. *Id.*

Diligence to discover truth or prevent fraud, want of, no defense. *Crawford*, 4 A. 789, 790. 62 S. E. 501; *Whitaker*, 11 A. 208, 211, 75 S. E. 258.

Distinction between simple larceny and cheating and swindling. *Finkelstein*, 105/619, 31 S. E. 589.

Evidence slight as to material element of case, but not legally insufficient. *Thomas*, 10 A. 142, 72 S. E. 720.

Sufficient to convict. *Williams*, 105/606, 31 S. E. 546; *Glenn*, 123/

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585, 51 S. E. 605; *Terrell*, 20 A. 718, 93 S. E. 422.

Not sufficient to convict. *O'Neal*, 10 A. 474, 73 S. E. 696; *Swift*, 126/590, 55 S. E. 478; *Franklin*, 2 A. 385, 58 S. E. 491.

False representation, essentials of cheating and swindling by. Proof lacking as to any, conviction contrary to law. *Goddard*, 2 A. 154, 58 S. E. 304.

Of fact, on which person defrauded parted with property. *Thomas*, 126/90, 54 S. E. 813.

Of past fact, though part of inducement be false representation of intention of accused to do a certain thing. *Smith*, 116/587, 42 S. E. 766.

In selling receiver's certificates, not proved. *Drought*, 101/544, 28 S. E. 1013.

Of wealth, etc., accusation sufficient; evidence insufficient. *Kindard*, 1 A. 146, 58 S. E. 263.

That he had purchased and become owner of valuable property, when authorized conviction as cheat and swindler. *Williams*, 105/606. 31 S. E. 546.

In exchange of horses; evidence in conflict; conviction supported. *Bryan*, 3 A. 26, 59 S. E. 185. In buying goods; conviction unsupported. *Ware*, 3 A. 478, 60 S. E. 109.

Falsely representing ownership of property, agreeing to sell and deliver it, and thus obtaining \$1. *Griffin*, 23 A. 174, 98 S. E. 186.

Financial condition, omitting to write answers to certain questions, but making cross-marks instead, while answering others, in printed form as to. *Ricks*, 8 A. 449, 69 S. E. 576.

Forgery, facts not making case of, but case of cheating and swindling. *Baron*, 12 A. 244, 77 S. E. 214.

Horse, misrepresentation as to soundness of; what must appear. *Ricks*, 15 A. 645, 84 S. E. 86.

Representation of, as sound, etc. Accusation sufficient as to unsound-

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ness. Defendant's knowledge of defects must be found by jury, not assumed in court's charge. *Waterman*, 114/262, 40 S. E. 262.

Misrepresentations in horse-swap, not authorizing conviction. *Fennell*, 16 A. 173, 84 S. E. 721.

Misrepresentation as to defect patent and discoverable by ordinary diligence, and actually discovered by purchaser, before conclusion of horse trade, not authorize conviction. *Ricks*, 15 A. 645, 84 S. E. 86.

Conviction not authorized by representation shown to have deceived, in sale of horse, with patent defect. *Odum*, 10 A. 27, 72 S. E. 511.

Insurance policy, woman stating it was payable to her, when in fact payable to her child; evidence insufficient as to knowledge of this fact and intent to defraud. *Hester*, 8 A. 380, 69 S. E. 31.

Intent to defraud, not sufficiently shown by circumstances consistent with innocence, though also supporting theory of guilt. *Redwine*, 17 A. 560, 87 S. E. 829.

Evidence insufficient as to, conviction set aside. *Bowles*, 12 A. 14, 76 S. E. 594; *Moore*, 11 A. 813, 76 S. E. 368.

Must exist when representations made; after-formed intent no basis for conviction. *Crawford*, 2 A. 185, 58 S. E. 301; *Ager*, 2 A. 158, 58 S. E. 374.

Knowledge of party to whom representations made, that they were false, not presumed. *Crawford*, 4 A. 790, 62 S. E. 501.

Of falsity of representation is material and must be proved. *Carlisle*, 2 A. 651, 58 S. E. 1068.

Of falsity of representation by seller of mule, that its eyes were sound, "so far as he knew," not shown, though a contrary opinion had been expressed to him. *Webb*, 12 A. 519, 77 S. E. 670. Of falsity of representation must appear be-

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yond reasonable doubt. *Formby*, 14 A. 596, 81 S. E. 799.

Of falsity of representation (as to defect in horse), not proved. *Ricks*, 15 A. 645, 84 S. E. 86.

Complete defense established by showing that the accused did not knowingly make false representations. *McLendon*, 16 A. 263, 85 S. E. 200.

Labor-contract law, cheating and swindling by violation of. *Wilson*, 138/489, 75 S. E. 619; *Latson*, 138/681, 71 S. E. 1052.

Advance of \$55 made in December, on promise to repay by work from August 1 next, at \$10 per month; work abandoned October 26; conviction set aside. *Mulkey*, 1 A. 521, 57 S. E. 1022; *Curry*, 7 A. 582, 67 S. E. 698. Advances after date of contract, testimony as to, admissible, under allegations of accusation. *Sheppard*, 9 A. 234, 70 S. E. 972. Hirer's note to third person, for pre-existing debt of employee, not an advancement. *Coleman*, 6 A. 398, 65 S. E. 46. Hirer's testimony that money he paid to one working with him was "advanced" on a new contract was opinion, without evidentiary value. *Walters*, 6 A. 566, 65 S. E. 357.

Allegations not sufficiently full and definite as to contract of cropper, who was to receive for his labor a half of the crop. *Thorn*, 13 A. 10, 78 S. E. 853.

Burden of proof. *Barnes*, 3 A. 333, 59 S. E. 937. Burden on State to show that there was no sufficient reason for non-performance of contract, or of failure to return money advanced; such proof lacking, conviction set aside. *Allen*, 22 A. 274, 95 S. E. 872; *Lewis*, 15 A. 406, 83 S. E. 439; *Jones*, 15 A. 642, 84 S. E. 88; *Beeman*, 17 A. 752, 88 S. E. 408; *Durham*, 17 A. 810, 88 S. E. 594. Burden on State to prove that there was no sufficient reason for

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quitting the hirer; such proof not furnished by hirer's testimony that the accused "did not have any reason" for so doing; this was a mere conclusion. *Simmons*, 18 A. 66, 88 S. E. 800. This burden not carried. *Hurt*, 18 A. 144, 88 S. E. 921; *Johnson*, 18 A. 699, 702, 90 S. E. 355. Burden on State to show that the hirer suffered loss which could be definitely computed. *Mobley*, 13 A. 728, 79 S. E. 906.

Cause for quitting service, sufficiency of. *Lewis*, 15 A. 406, 83 S. E. 439. Non-performance without sufficient cause must be shown by State. *Gatlin*, 16 A. 232, 84 S. E. 973; *Thorn*, 13 A. 10, 78 S. E. 853; *Johnson*, 13 A. 586, 590, 79 S. E. 524. Such an allegation may be proved by circumstantial evidence. *Mobley*, 4 A. 79, 60 S. E. 803. No evidence that non-performance of contract was without sufficient cause, conviction set aside. *Brown*, 8 A. 211, 68 S. E. 865. When beating by hirer is sufficient cause for non-performance. *Coleman*, 6 A. 398, 65 S. E. 46. Sufficiency of cause for quitting service (whipping). *Tennyson*, 16 A. 215, 84 S. E. 988. See *Jones*, 16 A. 216, 94 S. E. 988. Serious physical injuries here were good excuse for failure to perform service or return money. *Hart*, 121/140, 48 S. E. 925. Sufficiency of cause for quitting work (hirer's refusal to furnish more rations). *Swilley*, 14 A. 15, 80 S. E. 31. Sufficiency of cause for quitting service, hirer's testimony as to, was mere opinion. *Mobley*, 13 A. 730, 79 S. E. 906; *Swilley*, 14 A. 15, 80 S. E. 31; *Durham*, 17 A. 810, 88 S. E. 594; *Ashley*, 22 A. 626, 97 S. E. 82. Charge (not requested) as to intent at time of advance, error in omitting. *Porter*, 6 A. 770, 65 S. E. 814. Charge that on proof of specified acts deemed presumptive evidence of intent to defraud, the burden of prov-

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ing innocence would be shifted to defendant, error. *Fuller*, 10 A. 117, 72 S. E. 718.

Constitutional question as to labor contract act of 1903, not decided. *Oglesby*, 123/506, 51 S. E. 505. Statute to be so construed as not to render it repugnant to State or Federal constitution. *Fuller*, 10 A. 118, 72 S. E. 718. Statute held constitutional. *Wilson*, 11 A. 449, 75 S. E. 671; *Banks*, 124/15, 52 S. E. 74, 2 L. R. A. (N. S.) 1007; *Townsend*, 124/69, 52 S. E. 293. *McCoy*, 124/218, 52 S. E. 434; *Millinder*, 124/452, 52 S. E. 760; *Taylor*, 124/798, 53 S. E. 320; *Vance*, 2 A. 420, 58 S. E. 690; *Vance*, 128/661, 57 S. E. 889. Purpose stated; not unconstitutional; the two sections severable. *Wilson*, 138/489, 75 S. E. 619. Constitutionality, upheld only by denying to the statute any potentiality in effecting collection of debt, and refusing to attribute such intent to legislature. *Coleman*, 6 A. 401, 65 S. E. 46. See *Wells*, 6 A. 162, 64 S. E. 494. Construction of statute, as affected by provision of constitution prohibiting imprisonment for debt. *Johnson*, 13 A. 589, 79 S. E. 524. Act of 1903 not repugnant to clause of constitution inhibiting imprisonment for debt. *Lamar*, 121/154, 48 S. E. 977. See also *Young*, 4 A. 827, 62 S. E. 558.

Construction of statute strict. *Thorn*, 13 A. 12, 78 S. E. 853; *Johnson*, 13 A. 589, 79 S. E. 524; *Long*, 4 A. 572, 61 S. E. 1053. Act of 1903 construed, and its purpose stated. Not designed to create remedy to collect debt or compel performance of contract. Fraudulent intent must exist when promise made. *Mulkey*, 1 A. 521, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284; *Heywood*, 1 A. 530, 57 S. E. 1025. This statute not intended as means of collecting debt by criminal prosecution. *Hudson*, 14 A. 492, 81 S. E. 362.

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Johnson, 13 A. 589, 79 S. E. 524, **Mobley**, 13 A. 728, 79 S. E. 906. Act of 1903 not in conflict with U. S. statute prohibiting involuntary servitude based on debt; purpose, to punish for fraud, not furnish remedy for collection of debt. **Young**, 4 A. 827, 62 S. E. 558.

Contract presumed written, contrary not appearing. **Harwell**, 2 A. 617, 58 S. E. 1111. Contract must be definite as to time work is to begin, etc.; contract "to work a month," too indefinite. **Starling**, 5 A. 171, 62 S. E. 993. Contract not definite, conviction set aside. **Powell**, A. 10, 74 S. E. 440. Contract to work "for ten days," too indefinite. **James**, 5 A. 354, 63 S. E. 143. Contract not too indefinite as to time. work, wages. **Williams**, 6 A. 154, 64 S. E. 492. Too indefinite. **Wells**, 6 A. 162, 64 S. E. 494. Sufficiency of oral contract. **Walters**, 6 A. 566, 65 S. E. 357. Fatal variance between allegata and probata as to date of contract. **Green**, 6 A. 324, 64 S. E. 1121. Contract to furnish or pay for labor, not sufficient; it must be contract to work. **Coleman**, 6 A. 398, 65 S. E. 46; **Hankinson**, 6 A. 793, 65 S. E. 837. Contract too indefinite; implied contract not sufficient. **Sanders**, 7 A. 46, 65 S. E. 1071. Contract indefinite as to time. **Williams**, 7 A. 467, 67 S. E. 118. Contract not unconditional, to perform labor for money advanced thereon, but effective only on failure to pay note at maturity, is not within the statute. **Moore**, 8 A. 695, 70 S. E. 46. Contract not describing the work to be done, too indefinite. **Small**, 14 A. 15, 79 S. E. 1134. Contract not clear and definite in its terms (as to character of work); conviction set aside. **Adams**, 10 A. 801, 74 S. E. 95. Contract to perform labor at a definite rate during "turpentine season," not too indefinite; meaning of the words

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could be shown by parol proof. **Peacock**, 10 A. 402, 73 S. E. 404. Contract sufficiently set forth in accusation. **Solomon**, 11 A. 764, 76 S. E. 74. The word "contract," in indictment, presumed to mean written contract. **Brooks**, 12 A. 104, 76 S. E. 765. Contract too indefinite as to time. **Brooks**, 12 A. 104, 76 S. E. 765. Contract too indefinite. **Sheffield**, 13 A. 78, 78 S. E. 828. Contract too indefinite as to land to be cultivated, and as to kind and extent of crop. **Thorn**, 13 A. 12, 78 S. E. 853; **Solomon**, 14 A. 115, 80 S. E. 215. Contract not too indefinite as to land to be cultivated, etc.; former cases distinguished. **Lewis**, 15 A. 405, 83 S. E. 439. See **Mitchell**, 15 A. 804, 84 S. E. 205. Contract too indefinite as to the farm on which work was to be done. **Hurt**, 18 A. 144, 88 S. E. 921; **Gatlin**, 18 A. 232, 84 S. E. 973. Contract void, no basis for conviction of one violating it. **Singleton**, 14 A. 532, 533, 81 S. E. 596.

Conviction not authorized. **Ferguson**, 18 A. 730, 90 S. E. 371; **Stuckey**, 19 A. 441, 91 S. E. 784. Conviction set aside. **Collins**, 5 A. 174, 62 S. E. 719; **Denham**, 5 A. 303, 63 S. E. 62; **Calhoun**, 119/312. 46 S. E. 428; **Hart**, 121/140, 48 S. E. 925. Conviction set aside, where evidence, in connection with defendant's statement, showed absence of intent to defraud. **Williams**, 6 A. 154, 64 S. E. 492. What proof sufficient. **Millinder**, 124/452. 52 S. E. 760. What must be shown to convict of; contract to furnish and pay for labor, insufficient. **Johnson**, 125/243, 54 S. E. 184.

Cropper is within the act; tenant is not. **Vinson**, 124/19, 52 S. E. 79; **Townsend**, 124/69, 52 S. E. 293; **Young**, 124/788, 53 S. E. 101.

Evidence sufficient for conviction; definite contract; cause for failure to perform not shown; criminal in-

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tent. **Mosley**, 2 A. 190, 58 S. E. 298; **Baker**, 2 A. 662, 58 S. E. 1114. Evidence must show intent to defraud, and loss. Not sufficient here. **Fuller**, 2 A. 696, 59 S. E. 1. Evidence very weak, but not insufficient to support conviction. **Porter**, 7 A. 811, 68 S. E. 333. Evidence, admissibility of; and when insufficient for conviction. **Banks**, 124/15, 52 S. E. 74, 2 L. R. A. (N. S.) 1007; **Townsend**, 124/69, 52 S. E. 293; **McCoy**, 124/218, 52 S. E. 434; **Millinder**, 124/452, 52 S. E. 760; **Taylor**, 124/798, 53 S. E. 320.

False affidavit to procure advance: effect of. **Johnson**, 13 A. 586, 589. 79 S. E. 524.

Former transactions, admissibility of evidence as to. **Clarke**, 5 A. 95, 62 S. E. 663; **Denham**, 5 A. 303, 63 S. E. 62.

Indebtedness, effect of, as evidence. **Barnes**, 3 A. 333, 59 S. E. 937.

Intent of defendant in receiving money, rather than hirer's intent in paying, considered. **Walters**, 6 A. 566, 65 S. E. 357. Intent to defraud must exist at time contract made. **Coleman**, 6 A. 401, 65 S. E. 46; **Long**, 4 A. 572, 61 S. E. 1053. Fraudulent intent at time of obtaining money, not shown by evidence here; conviction set aside. **Thompson**, 4 A. 846, 62 S. E. 568. Intent to defraud must exist at time of advance; reversal for not so instructing jury (without request). **Simmons**, 18 A. 65, 88 S. E. 800; **Shepherd**, 8 A. 114, 68 S. E. 652. Rebuttal as to fraudulent intent, by showing that the accused executed a mortgage for money advanced. **Hogan**, 12 A. 227, 76 S. E. 1081. Such intent negatived by fact that accused worked for two months under the contract. **Swilley**, 14 A. 15, 80 S. E. 31. Evidence conflicting as to fraudulent intent, but sufficient. **Wilson**, 5 A. 612, 63 S. E. 597. In-

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tent to defraud not shown, conviction set aside; presumption of intent to defraud, not raised by facts here. **Raffield**, 7 A. 422, 67 S. E. 107. Circumstances not sufficient as to intent to defraud. **Redwine**, 17 A. 560, 87 S. E. 829. Proof of fraudulent intent formed after the advances were made, not sufficient. Fraudulent intent not shown. **Tennyson**, 16 A. 215, 84 S. E. 988; **Mack**, 16 A. 410, 85 S. E. 615; **Johnson**, 7 A. 812, 68 S. E. 318; **Brooks**, 12 A. 104, 76 S. E. 765; **Hudson**, 12 A. 535, 77 S. E. 828; **Harris**, 10 A. 835, 74 S. E. 439; **Roberts**, 6 A. 574, 65 S. E. 359; **Kirkland**, 6 A. 774, 65 S. E. 813. Alleged intent too widely separated from the act. **Hankinson**, 6 A. 793, 65 S. E. 837. Intent to defraud not shown, conviction set aside. **Swilley**, 14 A. 15, 80 S. E. 31; **Haywood**, 14 A. 114, 80 S. E. 213; **Hudson**, 14 A. 490, 81 S. E. 362; **Johnson**, 13 A. 566, 79 S. E. 524; **Mobley**, 13 A. 728, 79 S. E. 906. **Solomon**, 11 A. 764, 76 S. E. 74; **Rickerson**, 3 A. 443, 60 S. E. 114; **Young**, 3 A. 463, 60 S. E. 117.

Loss or damage to hirer, essential. **Millinder**, 124/452, 52 S. E. 760. Not shown where service proved, without showing its value. **Coleman**, 6 A. 398, 65 S. E. 46. Essential element of loss and damage to hirer lacking, no legal conviction. **Young**, 3 A. 463, 60 S. E. 117; **Williams**, 7 A. 467, 67 S. E. 118. Not shown. **Tennyson**, 16 A. 215, 84 S. E. 988; **Jones**, 16 A. 264, 85 S. E. 204. Loss to hirer shown where sum advanced was more than would be due for number of days on which work was done, at the rate per month stipulated. **Lewis**, 15 A. 406, 83 S. E. 439.

Merits of quarrel or sufficiency of provocation for hirer's treatment of defendant, immaterial. **Coleman**, 6 A. 398, 65 S. E. 46.

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Minor may be convicted. **Anthony**, 126/632, 55 S. E. 479; **Vinson**, 124/19, 52 S. E. 79; **Williams**, 124/136, 52 S. E. 156. Defense that minor was prevented by father from performing contract. **Sheppard**, 9 A. 234, 70 S. E. 972; **Howard**, 126/538, 55 S. E. 239; **Jackson**, 12 A. 693, 78 S. E. 53; **Johnson**, 2 A. 182, 58 S. E. 415; **Harwell**, 2 A. 613, 58 S. E. 1111.

Motion to arrest judgment good, in absence of allegation that non-performance and failure to repay were without good cause. **Mobley**, 4 A. 78, 60 S. E. 803; **Marks**, 4 A. 130, 60 S. E. 1016.

Novation of contract, effect of. **Williams**, 7 A. 468, 67 S. E. 118.

Old debt to be paid by work under new contract, conviction set aside where advances under new contract did not exceed wages earned under it. **Holloway**, 6 A. 243, 64 S. E. 671.

Part performance of contract, recognition that it applied to a particular farm. **Mitchell**, 15 A. 804, 84 S. E. 205.

Partnership, contract with, not violated by failing to perform services with partner after dissolution of firm. **Rease**, 12 A. 647, 77 S. E. 922.

Payment made without consent of defendant or without reference to the contract, no basis for conviction. **Shepherd**, 8 A. 114, 68 S. E. 652.

Performance prevented by prior contract with third person; no defense. **Paschal**, 16 A. 370, 85 S. E. 358.

Postpone trial for preparation and procurement of witnesses, refusal to, error. **Brown**, 120/145, 47 S. E. 543. Statute constitutional; no imprisonment for debt. **Lamar**, 120/312, 47 S. E. 958.

Pre-existing contract of same nature with third person, sufficient

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cause for non-performance of contract. **Johnson**, 13 A. 586, 590, 79 S. E. 524.

Presumption. **Barnes**, 3 A. 333, 59 S. E. 937. Presumption of intent to defraud, incorrect charge to jury as to. **Paschal**, 16 A. 374, 85 S. E. 358. Presumption rebutted by circumstances. **Williams**, 7 A. 467, 67 S. E. 118. Rebutted by showing sufficient cause for non-performance. **Coleman**, 6 A. 398, 65 S. E. 46. Not rebutted by proof of agreement to return money advanced. **Lewis**, 15 A. 406, 83 S. E. 439. Overcome by evidence that servant left employment because of threat of violence, in disagreement as to character of work. **Sterling**, 126/92, 54 S. E. 921. Presumption that payment was on contract in process of performance, and not on new one. **Walters**, 6 A. 566, 65 S. E. 357.

Promise as basis of prosecution for cheating and swindling. **Oliver**, 6 A. 791-2, 65 S. E. 843. Promises not constituting fraud. **Thorn**, 13 A. 12, 78 S. E. 852; **Thompson**, 13 A. 334, 79 S. E. 182.

Prosecution premature, before time for compliance with contract, though fraudulent intent existed. **Kemp**, 12 A. 80, 76 S. E. 752. Prosecution to collect debt; this motive not shown. **Mitchell**, 15 A. 804, 84 S. E. 205.

Prosecutor not the hirer, immaterial. **Mitchell**, 15 A. 804, 84 S. E. 205.

Return advance, offer to, when sufficient. **Starling**, 5 A. 173, 62 S. E. 993. Failure to return or pay for goods advanced should have been alleged. **Long**, 4 A. 571, 61 S. E. 1053. Offer to return money, what sufficient; general rule as to what constitutes a legal tender, not applied. **Paschal**, 16 A. 370, 85 S. E. 358. Effect of offer of repayment. **Hill**, 7 A. 336, 66 S. E. 802. Re-

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payment, when no defense. *Barnes*, 3 A. 333, 59 S. E. 937.

Security taken, not alone prevent conviction, if guilt otherwise established. *Harwell*, 2 A. 613, 58 S. E. 1111.

Sickness good excuse for non-compliance. *Johnson*, 7 A. 814, 68 S. E. 314.

Statute of frauds not complied with. *Brooks*, 12 A. 104, 76 S. E. 765. Contract need not be civilly enforceable; non-compliance with statute of frauds not material. *Brown*, 8 A. 211, 68 S. E. 865.

Sunday not violated by contract made on. *Bendross*, 5 A. 175, 62 S. E. 728.

Testimony as to loss, and as to insufficiency of cause for quitting service, a mere conclusion. *Tennyson*, 16 A. 215, 84 S. E. 988.

Time when agreed period of seven months was to begin, not shown by evidence. *Hurt*, 18 A. 144, 88 S. E. 921. Act of 1903 relates to procurement contemporaneously or subsequently to contract. Failure to pay, as agreed, a debt existing at time of contracting, no offense. *Bridges*, 126/91, 54 S. E. 916.

Uncertainty of contract or of description of place, or as to whether the prosecution was "under the first or the second division of the statute," not good ground of demurrer to indictment here. *Ashley*, 22 A. 626, 97 S. E. 82.

Variance between allegation and proof, not caused by evidence as to agreement to feed defendant, besides paying wages. *Brawner*, 5 A. 498, 63 S. E. 514. Fatal variance between allegations and proof as to nature of contract, and as to persons furnishing goods. *Jackson*, 4 A. 461, 61 S. E. 862. Fatal variance where contract with individual was alleged, and contract with him in representative capacity was proved. *Roberts*, 6 A. 574, 65 S. E. 359. Im-

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material variance between allegata and probata as to amount advanced. *Mitchell*, 15 A. 804, 84 S. E. 205.

Land, cheating and swindling by representations as to title to. *Crawford*, 117/247, 43 S. E. 762; *Holton*, 109/127, 34 S. E. 358; *Cohen*, 2 A. 689, 59 S. E. 4; *Crawford*, 4 A. 789, 62 S. E. 501; *Laster*, 4 A. 804, 62 S. E. 508.

Fraudulently obtaining lease of; authorities discussed. *Morse*, 9 A. 424, 71 S. E. 699. Whether statute applies to obtaining title to land. *Ib.* 426.

Law, crime of cheating and swindling may be committed where both parties intend to violate. *Foster*, 8 A. 119, 122, 68 S. E. 739.

Lien, deceiving as to existence of. *Portwood*, 18 A. 502, 89 S. E. 591.

Evidence not warranting conviction; no proof of loss in consequence of representation. *Connor*, 8 A. 688, 70 S. E. 45.

Statement as to non-existence of; offense committed though lien recorded. *Brown*, 6 A. 329, 64 S. E. 1001.

Proof of existence of, was sufficient proof of damage. *French*, 4 A. 462, 61 S. E. 836. *Jacobs*, 4 A. 511, 61 S. E. 924.

Of general judgment, offense committed by representations as to, as well as contract liens. *Burns*, 20 A. 77, 92 S. E. 548.

Loss or damage to hirer essential. *Braughner*, 125/629, 54 S. E. 653.

Not shown, some service proved, value not given. Advance not made by paying mortgage debt and taking transfer. *Abrams*, 126/590, 591, 55 S. E. 497.

Implied by allegation that the prosecutor was "cheated and defrauded." *Cheek*, 14 A. 536, 81 S. E. 586.

Must be proved; not shown by testimony here as to worthlessness of mule; non-essential allegations not

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proved, fatal variance. *Caswell*, 5 A. 484, 63 S. E. 566.

"*Magic healer*," cheating and swindling by. *Bennett*, 4 A. 294, 303, 306, 61 S. E. 546.

Mortgage, false promise to give, and false pretense of ownership, cheating and swindling by. *Hansford*, 7 A. 196, 66 S. E. 400.

When giving second mortgage without disclosing first, is not cheating and swindling by deceitful means, etc. *Griffin*, 3 A. 477, 60 S. E. 277.

Motive not illustrated by false representations made more than two months after the alleged offense. *Livingston*, 17 A. 136, 86 S. E. 449.

Note, when cheating and swindling not committed by causing one to give. *Coleman*, 6 A. 398, 401, 65 S. E. 46.

False representation as to promise of other to sign, with defendant, thereby inducing prosecutor to sign. Indictment sufficient as against defrauder. *Moye*, 19 A. 440, 91 S. E. 941.

Cheating and swindling by inducing another to give, though insolvent. *Holton*, 109/127, 34 S. E. 358.

Official position and power, cheating and swindling by false pretense of, if relied on. *Jackson*, 118/125, 44 S. E. 833.

Ownership of money obtained and name of person defrauded should be alleged and proved. *O'Neal*, 10 A. 474, 73 S. E. 696.

Allegations as to, not necessarily imply absolute ownership. *Livingston*, 17 A. 139, 142, 86 S. E. 449.

Of article, not subject to levy, representation as to, no basis for prosecution, when. *Albert*, 11 A. 94, 74 S. E. 714.

Circumstances not excluding reasonable hypothesis of ownership by mortgagor, or of good faith in representations. *Hammond*, 15 A. 471, 83 S. E. 860.

Of property on which lien is outstanding, representation of. Injury

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shown by proof that security is of less value than it would have been had representation been true. *Rucker*, 114/13, 39 S. E. 902.

Fraudulent representations to president of bank, as to ownership of land in obtaining loan; indictment sufficient. *Livingston*, 17 A. 136, 86 S. E. 449.

Promise to work in payment of pre-existing debt is not. *Thorn*, 13 A. 12, 78 S. E. 853.

Relating to future is not. *Edge*, 114/113, 39 S. E. 889.

No basis for prosecution, when. *Neidlinger*, 17 A. 816, 88 S. E. 687.

As to what may occur in the future, no basis for prosecution. *Fennell*, 16 A. 173, 84 S. E. 721.

Combined with a pretense as to an existing fact. *Holton*, 109/127, 34 S. E. 358.

Obtaining thing of value on, and not keeping the promise, not cheating and swindling, when. *Oliver*, 6 A. 791, 65 S. E. 843. Effect of promise combined with representation as to work done. *Ib.* 792.

Representations which do not make this offense. *Broznack*, 109/514, 35 S. E. 123.

Not acted on when made, whether would support conviction in case of later extension of credit. *Formby*, 14 A. 596, 81 S. E. 799.

Must be deceiving and injurious; but it is not necessary that the defendant be benefited by his fraud. *Foss*, 15 A. 478, 83 S. E. 880.

That could not in legal contemplation deceive, no basis for prosecution; representation here that another had promised to "stand security" could not deceive, the promise not being binding under statute of frauds. *Fambrough*, 113/936, 39 S. E. 324.

Must relate to past or present; offense not committed by obtaining thing on promise, and not keeping the promise. *Meacham*, 7 A. 714, 68 S. E. 52.

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Must relate to the past or the present; no promise or statement as to what may occur in the future can be the basis of prosecution. *Dickerson*, 113/1035, 39 S. E. 426.

Falsity of, not shown, no conviction. *Fleming*, 114/526, 40 S. E. 705; *Lee*, 120/194, 47 S. E. 545. Or unless person cheated sustained pecuniary loss. Indictment must show this. *Busby*, 120/858, 48 S. E. 314. Relating partly to matter of fact and partly to matter of opinion, offense by. *Whitaker*, 11 A. 208, 75 S. E. 258.

Restitution no bar to conviction. *Lowe*, 111/650, 36 S. E. 856.

Separate offenses, whether were committed by representations made near the same time, as to the same matter. *Williams*, 8 A. 583, 70 S. E. 47.

Silence, cheating and swindling committed by, when. *Crawford*, 117/250, 43 S. E. 762.

Testimony as to a transaction not connected with the one in question, not admitted to show good faith of defendant. *McNulty*, 21 A. 783, 95 S. E. 304.

Title, false representations as to, cheating and swindling. *Crawford*, 117/247, 43 S. E. 762; *Holton*, 109/127, 34 S. E. 358.

Value of shares of stock, cheating and swindling by misrepresenting, indictment sufficient. *Whitaker*, 11 A. 209, 75 S. E. 258. Admissibility of testimony as to value. *Ib.* 209.

Error in not giving charge requested, as to honest mistake of defendant as to value. *Whitaker*, 11 A. 209, 217, 75 S. E. 258.

Not committed by false representation that other party could obtain certain counterfeit money by going to a certain expense; counterfeit money is not a thing of value. *Foster*, 8 A. 119, 68 S. E. 652.

Variance in allegation and proof of contract. *Chapple*, 126/638, 55 S. E. 471.

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Not material, where payment of money alleged, attempt to obtain payment proved, where defendant was convicted of attempt. *Foss*, 15 A. 479, 83 S. E. 880.

Not material, when representations alleged to have been made to A were proved as made to B in A's presence. *Foss*, 15 A. 478, 83 S. E. 880.

Wages, offense not committed by assigning, and afterwards collecting them. *Meacham*, 7 A. 714, 68 S. E. 52.

Wife defrauded of money by one who pretended he could compromise crime charged against husband. *Ryan*, 104/78, 30 S. E. 678.

Work done, cheating and swindling by misrepresenting amount of, and thus getting more pay than entitled to; evidence weak and unsatisfactory, but sufficient to convict. *King*, 6 A. 546, 65 S. E. 318.

Writing, objection that contents of, were best evidence, not good, as to witness testifying to false representation of contents. *Hester*, 8 A. 380, 69 S. E. 31.

Check; "False writing," in Penal Code, § 249, includes check. *Safford*, 11 A. 329, 332, 75 S. E. 338. Forgery of. *Blount*, 11 A. 239, 74 S. E. 1099.

In fictitious name, obtaining money by. *Sharp*, 7 A. 605, 67 S. E. 696.

Worthless. Act of 1914, as to drawing checks, etc., without funds to meet them, applies only when there is a fraudulent intent; not violated by giving post-dated check. *Neidlinger*, 17 A. 811, 88 S. E. 687.

Worthless. Cheating and swindling by giving post-dated check. *Neidlinger*, 17 A. 815, 88 S. E. 687.

Worthless, given for farm product (cotton); indictment sufficient, good plea of former jeopardy. *Whitaker*, 9 A. 213, 70 S. E. 990.

Worthless, given for farm product (cotton); offenses under Penal Code, §§ 551, 553, distinguished. *Moore*, 12 A. 576, 77 S. E. 1132.

Worthless; what necessary to constitute cheating and swindling by giving. *Williams*, 10 A. 395, 73 S. E. 424; *O'Neal*, 10 A. 474, 73 S. E. 696.

Child cruelly beaten, no crime unless unreasonableness found. *Gary*, 118/17, 44 S. E. 817.

Fourteen years old, cruelty to, by whipping, marks of physical injury need not appear, to prove corpus delicti; conviction of parent proper. *Stone*, 1 A. 292, 57 S. E. 992.

Deprived of medicine when ill, not deprived of sustenance. *Justice*, 116/605, 42 S. E. 1013, 59 L. R. A. 601.

Beaten by adult, insulting language and gestures not justification. *McKinley*, 121/193, 48 S. E. 917.

In womb, assault to murder by using instrument to destroy; indictment sufficient, as to accessory before the fact; evidence not sufficient. *Snell*, 13 A. 158, 79 S. E. 71. See *Brown*, 125/8, 53 S. E. 767.

Punished by authority of parent, not assault and battery, when. *Harris*, 115/578, 41 S. E. 983.

Meaning of, in code provisions as to attempt to destroy unborn child. *Taylor*, 105/846, 33 S. E. 190.

In Penal Code, § 81, as to abortion, means an unborn child, so far developed as to move in the womb. *Sullivan*, 121/183, 48 S. E. 949; *Barrow*, 121/187, 48 S. E. 950.

Church, disturbance of worship in. *Pope*, 6 A. 786, 65 S. E. 813; *Taylor*, 7 A. 603, 67 S. E. 684.

Disturbance of worship, statute as to, not violated by one defending against assault, when. *Cummings*, 8 A. 534, 535, 69 S. E. 918; *Brown*, 14 A. 21, 80 S. E. 26. Evidence warranting conviction. . *Ib.*

Having liquor at, unlawful. *Burden*, 8 A. 118, 68 S. E. 622. Carrying liquor to; law violated by carrying to imme-

diate proximity, when. *Smith*, 8 A. 472, 69 S. E. 590.

Indecent language from pulpit, when criminal. *Holcombe*, 5 A. 47, 52, 62 S. E. 647.

Intoxication at. *Harrell*, 9 A. 625, 71 S. E. 1030.

Is not "public building," within meaning of Penal Code, § 777. *Collum*, 109/531, 35 S. E. 121.

Larceny from; sufficient allegations as to ownership, etc. *Gibson*, 13 A. 68, 78 S. E. 829.

See catchwords, "Disturbing divine worship."

Cigarettes to minor, conviction of furnishing. *Ramfos*, 120/175, 47 S. E. 562.

Club, keeping or sale of liquor by, when unlawful. *Cronin*, 13 A. 652, 79 S. E. 747.

Cocaine, conviction of selling. *Holmes*, 7 A. 570, 67 S. E. 693.

Prescribing unlawfully; admissibility of proof of other prescribing than that charged. *Lee*, 8 A. 413, 69 S. E. 310.

Prescribing unlawfully. Circumstances sufficient to convict. *Pinckney*, 9 A. 129, 70 S. E. 594.

Prescribing unlawfully; constitutionality of statute as to. *Pinckney*, 9 A. 129, 70 S. E. 594; *Dukes*, 9 A. 538, 71 S. E. 921.

Unlawful sale of; admissibility of testimony as to demoralizing effects. *Howard*, 18 A. 6, 89 S. E. 443.

Unlawful sale of; evidence warranting conviction. *Butler*, 14 A. 446, 81 S. E. 370. Charge to jury on expert evidence as to pernicious effects of cocaine, not error. *Ib.*

Compounding or settling felonies or misdemeanors. *Jones*, 112/429, 37 S. E. 729, 52 L. R. A. 271; *Cromer*, 11 A. 656, 75 S. E. 1056.

Of offenses forbidden. *Harris*, 101/84, 28 S. E. 620.

Necessity of proving actual commission of felony in order to convict of. *Hays*, 142/592, 83 S. E. 236.

Contract to suppress criminal prosecution, for a consideration personal to

prosecutor, is immoral and contrary to public policy. *Hays*, 15 A. 386, 83 S. E. 502.

Not shown without proof of the commission of the felony alleged to have been compounded. *Rome Scale Co.*, 15 A. 387, 83 S. E. 434.

Proof of consideration. *Hays*, 15 A. 386, 83 S. E. 502. Good faith in, not material. *Ib.*

The consideration need not accrue to defendant; it may be for benefit of another. *Hays*, 15 A. 386, 83 S. E. 502. Concealed weapon carried on person, in his own home, a crime. *Brown*, 114/60, 39 S. E. 873.

Valid amendment of law as to. *Cunningham*, 128/55, 57 S. E. 90; *Cunningham*, 1 A. 697, 57 S. E. 90; 58 S. 23.

Carrying in satchel on seat of car, where strap attached to satchel rested on shoulder, criminal. *Willis*, 105/633, 32 S. E. 155.

Carrying in basket or bag on arm, when not unlawful; error in charge to to jury as to. *Sullivan*, 6 A. 533, 65 S. E. 354.

Carrying in sack under arm, unlawful. *Warren*, 6 A. 18, 64 S. E. 111. Conviction of carrying concealed, affirmed. *Jordan*, 6 A. 241, 64 S. E. 714.

Carrying pistol wrapped in bundle violates statute as to. Purpose of so carrying, immaterial. *Edwards*, 126/89, 54 S. E. 809.

Charge as to, error; and evidence insufficient to convict of carrying. *Stripling*, 114/538, 40 S. E. 733.

Conflict of testimony as to whether in hip-pocket or side coat-pocket. *Sanders*, 122/143, 50 S. E. 66.

Continuity of the offense, how broken so as to make second offense. *Morgan*, 119/964, 966, 47 S. E. 567.

Conviction of carrying, not warranted here. *Smith*, 113/645, 38 S. E. 955.

Conviction of carrying, warranted. *Garrison*, 17 A. 314, 86 S. E. 743; *Foreman*, 14 A. 815, 82 S. E. 354; *Bivins*, 5 A. 434, 63 S. E. 523; *Will-*

iams, 7 A. 33, 65 S. E. 1097; *Bailey*, 8 A. 32, 68 S. E. 457; *Hunter*, 4 A. 761, 62 S. E. 466. Evidence not authorizing charge of court on relative weight of positive and negative testimony as to. *Daniel*, 4 A. 843, 62 S. E. 539.

Disclosures of, compelled while not under legal arrest, not admissible to prove charge of carrying. *Evans*, 106/519, 32 S. E. 659, 71 Am. St. R. 276. Evidence that it was discovered by search of accused when under arrest, admitted. (*Evans' case*, 106 Ga. 519, distinguished.) *Springer*, 121/155, 48 S. E. 907.

Discovered on person of one held under illegal arrest, evidence as to, when admissible, and when not. *Croy*, 4 A. 456, 61 S. E. 848.

Conviction of carrying, illegal, on evidence procured by unlawful search and seizure under illegal arrest. *Hughes*, 2 A. 29, 58 S. E. 390; *Stewart*, 2 A. 98, 58 S. E. 395; *Sherman*, 2 A. 148, 686, 58 S. E. 393, 1122; *Hammock*, 1 A. 126, 58 S. E. 66.

Evidence as to discovery of pistol by illegal search of person, not admissible. *Holloway*, 16 A. 143, 84 S. E. 590.

Evidence obtained by invasion of constitutional rights, no reason for setting conviction as contrary to evidence. *Banister*, 11 A. 15, 74 S. E. 444.

Evidence that it was discovered by search of accused when under arrest, admitted. *Dozier*, 107/708, 33 S. E. 418.

Facts showing guilt of. *Brown*, 2 A. 417, 58 S. E. 549. Error in charge assuming that pistol was carried. *Jenkins*, 2 A. 626, 58 S. E. 1063.

Former conviction of carrying pistol to church, no bar to prosecution for carrying concealed. *Veasy*, 4 A. 845, 62 S. E. 561.

Legal conviction of carrying. *Benton*, 3 A. 453, 60 S. E. 116; *Reese*, 3 A. 532, 60 S. E. 122.

Profanity, threats, and drawing pistol, improper reference to, in argument of prosecuting attorney; harmful effect

not cured by instruction to jury to disregard it. *Cofield*, 14 A. 813, 82 S. E. 355.

Conditional sale, encumbering personal property held under; facts authorizing conviction. *Bernolak*, 18 A. 7, 89 S. E. 302. Defendant not aided by agreement made with vendor after completion of crime. *Ib.*

Mortgaging property held under, no crime, if accused were ignorant that note he had signed reserved the title. *Miley*, 118/274, 45 S. E. 245.

Statute as to sale of property held under, not violated by purchaser making bill of sale of property to which title had not been retained by his vendor. *Shirley*, 13 A. 676, 79 S. E. 752.

Statute as to sale of property held under, not applicable where the original contract was void because the vendor therein was unlicensed and selling unlawfully. *Singleton*, 14 A. 527, 81 S. E. 596.

Sale unlawful, by one holding the property under. *McDuffie*, 19 A. 39, 90 S. E. 740. Testimony as to unsuitability of the property for the purpose for which the defendant purchased it, excluded. *Ib.* Intent to defraud, a jury question. *Ib.* "Sale," "Sell," construed as including barter or exchange. *Ib.*

Convicts; authority of whipping-boss; prosecution for assault and battery in beating convict. *McDonald*, 6 A. 339, 64 S. E. 1108.

Corporation; dividend declared unlawful. *Cabaniss*, 8 A. 129, 68 S. E. 849.

Cotton stealing. *Hall*, 120/142, 47 S. E. 519; *White*, 19 A. 230, 91 S. E. 280.

Unlawful sale of, effected by transfer of bill of lading. *Moore*, 12 A. 576, 77 S. E. 1132.

Circumstances not authorizing conviction of larceny of cottonseed. *Harris*, 19 A. 741, 92 S. E. 225.

Counterfeiting or imitating label, trade-mark etc., an offense under act of 1898. Immaterial that package contains the article indicated by the unauthorized label. *Butler*, 127/700, 56 S. E. 1000.

Labels or trade-marks, no violation of P. C. (1895), §§ 252-254, except where original adopted by association or union of workmen. *Comer*, 103/69, 29 S. E. 501.

Similitude of false and genuine writings must appear. *Hale*, 120/184, 47 S. E. 531.

In Penal Code, of broader meaning than in common parlance; includes imitation of genuine original and false writing purporting to be genuine. *Sessions*, 3 A. 13, 59 S. E. 196.

"Cow," meaning of, and sufficiency of description. *Gibson*, 7 A. 692-3, 67 S. E. 838; *Wheeler*, 18 A. 15, 88 S. E. 712.

Crop, sale of, without paying for supplies advanced by landlord. *Hackney*, 101/512, 28 S. E. 1007.

Destroyed by storm, replanted, not subject to mortgage before executed. *Hall*, 2 A. 739, 59 S. E. 26.

Tenant disposing of, to injury of landlord, not guilty of larceny, but guilty of a different offense. *Teel*, 7 A. 600, 67 S. E. 699.

Unlawful sale of; conviction warranted. *Alexander*, 10 A. 27, 72 S. E. 517. Sale not criminal here. *Robinson*, 10 A. 791, 74 S. E. 92; *Brundrige*, 10 A. 816, 74 S. E. 298.

Unlawful sale of; essential elements, intent to defraud, and loss to landlord; insufficient evidence to convict. *Thompson*, 12 A. 201, 76 S. E. 1072.

Unlawful sale of; fraudulent intent essential; facts not supporting conviction. *Kellam*, 2 A. 479, 58 S. E. 695. Debt other than for advances to make crop, no basis for prosecution. *Brown*, 2 A. 657, 58 S. E. 1070.

Sale by indirection, or contemplating future delivery, sufficient. Sale effected by transfer of rent notes payable in cotton. *Bell*, 14 A. 425, 81 S. E. 253.

Unlawful sale of, not shown. *McGarr*, 13 A. 80, 78 S. E. 776.

Cropper carrying part of the crop to another county, no violation of Penal Code, § 729. *Scott*, 6 A. 332, 64 S. E. 1005.

Conversion of part of crop by, to his own use, not larceny nor indictable trespass, but indictable under Penal Code, § 729. *Lane*, 113/1041, 39 S. E. 463.

Converting to his own use part of crop set apart to landlord and entrusted to cropper's charge, guilty of larceny after trust. *Smith*, 7 A. 468, 67 S. E. 202.

Cruelty to animal; conviction warranted. *Jones*, 20 A. 84, 92 S. E. 558.

By shooting dog; conviction sustained. *May*, 120/497, 48 S. E. 153. Cruelty to dog, indictable. *Wilcox*, 101/563, 28 S. E. 981, 39 L. R. A. 709.

By killing dog; conviction sustained. *Moore*, 121/194, 48 S. E. 919.

By beating cow; conviction sustained. *James*, 1 A. 779, 57 S. E. 959.

By driving horse faster and farther than able to go; proper charge to jury. *Clary*, 8 A. 93, 68 S. E. 615.

By reckless driving. *Davis*, 14 A. 571, 572, 81 S. E. 906.

Circumstantial evidence authorized conviction. *Law*, 5 A. 615, 63 S. E. 584.

Evidence not sufficient. *Laws*, 15 A. 365, 83 S. E. 279.

Law not violated by owner of dog (or another with his consent) killing it in a swift, comparatively painless manner. *Miller*, 5 A. 463, 63 S. E. 571.

Proof of general character of bull for docility, and that he never exhibited viciousness, allowed in rebuttal of evidence that it was necessary to kill him because of his dangerous character. *Stonecypher*, 17 A. 818, 88 S. E. 719.

Refusal of requested instructions to jury, not error. *Stonecypher*, 17 A. 818, 88 S. E. 719.

Wilful omission to furnish horse food and shelter. *Griffith*, 116/835, 43 S. E. 251.

When law not violated by owner of sheep, who kills sheep-killing dog of another. *Miller*, 5 A. 463, 63 S. E. 571. Evidence warranting conviction of one beating mule in plowing; burden of explaining condition. *Tally*, 5 A. 480, 63 S. E. 543.

"Curtilage" of residence defined; includes interior of dwelling-house. *Haines*, 8 A. 627, 70 S. E. 84; *Wright*, 12 A. 514, 77 S. E. 657.

"Day," in law prohibiting sale of liquor on election days, is from midnight to midnight. *Rose*, 107/697, 33 S. E. 439.

Deceitful means, and artful practice, when silence is. *Crawford*, 117/250, 43 S. E. 762.

Deed, larceny of; allegation of ownership, not required. *Hanson*, 13 A. 372, 79 S. E. 176.

Demand not necessary, to show criminal conversion, when. *Lewis*, 17 A. 667, 87 S. E. 1087.

Dentistry practice without license, penal only as to those not engaged therein when act of 1897 passed. *Herring*, 114/96, 39 S. E. 866.

Act of 1897 constitutional. It is no defense to one indicted thereunder that he was practicing dentistry when the act was passed, unless he shows that such practice was lawful. *Morris*, 117/1, 43 S. E. 368.

Diseased animal, sale of. *Evitt*, 23 A. 532, 98 S. E. 737.

Disorderly conduct. See **Municipal Corporations**.

"Disorderly house" defined; evidence not sufficient to support conviction of keeping such a house. *Fanning*, 17 A. 316, 86 S. E. 731.

Evidence authorized conviction of keeping. *Vickers*, 23 A. 315, 98 S. E. 97. See catchwords **"Lewd house."**

Indictment for keeping; what allegations must be proved; need not prove that keeping it was to the encouragement of all the vices alleged. *Heard*, 113/444, 449, 39 S. E. 118.

Evidence showed keeping of. *Wilder*, 3 A. 443, 60 S. E. 112.

Disposing unlawfully of incumbered property. By killing and eating it. *Linder*, 17 A. 520, 87 S. E. 703. Meaning of "dispose of" ("sell or otherwise dispose of") in Penal Code. *Bugg*, 17 A. 213, 214, 86 S. E. 405; *Scott*, 6 A. 333-4, 64 S. E. 1005; *Gilbert*, 16 A. 249, 85 S. E. 86.

Disturbing divine service and disturbing Sunday school, different offenses. *Clay*, 4 A. 142, 60 S. E. 1028.

By taking possession of door-step and preventing persons from entering church. *Tanner*, 126/77, 54 S. E. 914.

Evidence showed guilt of. *Shirley*, 1 A. 143, 57 S. E. 912. *Aliter*, *Taylor*, 1 A. 539, 57 S. E. 1049.

By shooting pistol near congregation while they were at dinner on the church grounds. *Folds*, 123/167, 51 S. E. 305.

"Religious services," synonymous with "divine service," here. *McDaniel*, 5 A. 831, 63 S. E. 919. Facts showing assemblage of congregation for divine service. *Ib.*

Whether shown by testimony of one member in church, that he was disturbed by remark made outside, not likely to disturb. *McDaniel*, 5 A. 831, 63 S. E. 919.

By cursing and fuss outside of church. *Taylor*, 7 A. 603, 67 S. E. 684.

Committeeman appointed to notify preacher not to preach, and forcibly ejecting him from pulpit, guilty. *Coleman*, 4 A. 788, 62 S. E. 487. Charge of court as to what constitutes the offense, considered. *Daniel*, 4 A. 844, 62 S. E. 567.

Conviction warranted. *Harris*, 11 A. 141, 74 S. E. 895; *Minter*, 104/744, 30 S. E. 989.

Minister occupying pulpit under bona fide claim of right, and thus preventing another from preaching, not guilty. *Woodall*, 4 A. 783, 62 S. E. 484.

Preacher not guilty of, under facts here. *Jackson*, 21 A. 779, 95 S. E. 302.

By "indecently acting," talking or whispering, so as to disturb one member of congregation. *Nichols*, 103/61, 29 S. E. 431.

Proper charge to jury as to. *Pope*, 6 A. 786, 65 S. E. 813.

Statute as to, not designed to be used as a means of settling rights of contestants for privilege of conducting worship at a particular place. *Woodall*, 4 A. 783, 62 S. E. 485; *Coleman*, 4 A. 788, 62 S. E. 487.

See catchword, Church.

Disturbing school. Evidence insufficient as to disturbance by threats and profane language used near crowd at school exercises here. *Manning*, 16 A. 654, 85 S. E. 930.

"Assemblage or meeting," of school, meaning of. *Harwell*, 10 A. 115, 72 S. E. 936.

At designated schoolhouse, shown by proof of disturbance of school assembly at bush-arbor near the house. *McCright*, 110/261, 34 S. E. 368.

Intentional disturbance is "wilful," proper instruction to jury. *Kendall*, 9 A. 794, 72 S. E. 164.

Judicial cognizance taken that commencement exercises are for literary and social improvement. *Manning*, 16 A. 654, 85 S. E. 930.

Statute not applicable where assemblage is for purpose not connected with exercises pertaining to school. *Harwell*, 10 A. 115, 72 S. E. 936.

Statute not violated by disturbing sleight-of-hand performance of traveling performer in school-house, though part of proceeds was to go to school purposes. *Harwell*, 10 A. 115, 72 S. E. 936.

Dividend declared unlawfully; sufficiency of indictment; facts constituting offense; admissibility of testimony. *Cabaniss*, 8 A. 129, 68 S. E. 849.

Facts constituting offense; meaning of "net earnings." *Mangham*, 11 A. 440, 75 S. E. 508.

Dog mad, public enemy; shooting him, no violation of statute against shooting on Sunday. *Manning*, 6 A. 240, 64 S. E. 710.

Driving horse without consent of owner; accusation not alleging that it was "wilfully" done, not sustained; arrest of judgment. *Herndon*, 23 A. 538, 99 S. E. 11.

Drugs, unlawful sale of; evidence authorizing conviction. *Jones*, 21 A. 22, 93 S. E. 514.

Act of 1907 as to furnishing or sale of certain drugs, discussed. *Silver*, 13 A. 722, 79 S. E. 919.

Prescribing unlawfully; admissibility of other transactions. *Lee*, 8 A. 413, 69 S. E. 310.

Unlawful sale of; accusation sufficient as against demurrer; no error in omitting charge to jury as to defendant's want of knowledge of sale by agent. *Harker*, 8 A. 94, 68 S. E. 650.

Prosecution may be in city court, under accusation. *Cooper*, 13 A. 697, 79 S. E. 908. Accusation of sale to a named person, not sustained by proof of sale to another. *Ib.*

Unlawful sale of; employee guilty. *Oppenheim*, 12 A. 481, 77 S. E. 652.

Unlicensed partner or employee in drug-store may not sell, when licensed proprietor or manager is not in actual personal charge of the business. *Sconyers*, 6 A. 804, 65 S. E. 814. When owner of drug-store need not be licensed. *Ib.*

Unlawful administration of, resulting in death, indictment for involuntary manslaughter, sufficient; conviction authorized. *Silver*, 13 A. 722, 79 S. E. 919.

Involuntary manslaughter in administration of chloroform. *Roughlin*, 17 A. 205, 86 S. E. 452. Prescribing alcohol unlawfully. *Gaskins*, 17 A. 807, 88 S. E. 592.

Use of, to destroy unborn child. *Snell*, 13 A. 163, 79 S. E. 71.

Druggist's sale of medicine containing whisky, when unlawful. *Bradley*, 121 /201, 48 S. E. 981.

Dwelling-house, shooting at. *Holmes*, 21 A. 150, 94 S. E. 69.

Duel, killing in, or at chance meeting before time appointed for, without fresh cause, not manslaughter, but murder. *Bundrick*, 125/757, 54 S. E. 683.

Dynamiting fish; circumstances authorizing conviction. *Bracewell*, 21 A. 133, 94 S. E. 91.

Election precinct, weapon carried to, indictment and evidence sufficient for conviction. *Kitchens*, 116/847, 43 S. 256.

Embezzlement and larceny distinguished. *Robinson*, 109/565, 34 S. E. 147.

By clerk of county commissioners, such office being authorized by statute. *Cooper*, 101/784, 29 S. E. 22.

By employee of corporation; indictment sufficient; questions as to constitutionality of statute not properly made. *Carr*, 10 A. 21, 72 S. E. 516.

By officer of corporation; evidence warranting conviction; proper instructions to jury. *Mangham*, 11 A. 427, 75 S. E. 512.

By officer of local branch of fraternal order; proper allegations as to corporation, ownership, etc. *Cook*, 8 A. 522, 70 S. E. 31.

By public officer, mere refusal or neglect to pay over funds is not. Discussion as to what constitutes, and authorities as to. *Robinson*, 109/564, 34 S. E. 147.

Circumstances tending to show guilt. *Bridges*, 103/21, 29 S. E. 859.

Constitutionality of § 186 of Penal Code (1910). *Carter*, 17 A. 90, 92, 86 S. E. 287.

Constitutionality of statute as to embezzlement by officer or employee of bank or other corporate body. *Cason*, 16 A. 824, 86 S. E. 644.

Copy of demand on defendant for return of money alleged to have been embezzled, admitted in evidence; no error. *Vaughn*, 17 A. 269, 86 S. E. 461.

Corporate character of company from which the property was taken, recognized judicially. *Dixon*, 16 A. 290, 85 S. E. 257.

Corporate character of institution from which money was taken alleged, but not proved, conviction set aside. *Roberson*, 12 A. 102, 76 S. E. 752.

Corporation imported by name used in indictment; incorporation not alleged, no proof of incorporation necessary. *Vaughn*, 17 A. 268, 86 S. E. 461.

Evidence demanding conviction; errors immaterial. *Cason*, 16 A. 820, 86 S. E. 644.

Financial embarrassment at time of alleged offense, when relevant. *Bridges*, 103/21, 29 S. E. 859.

Indictment and proof sufficient. Conviction required despite inadmissible evidence. *Haupt*, 108/60, 33 S. E. 829.

Inference as to agent's fraudulent intent in not remitting money to principal. *Dixon*, 16 A. 290, 85 S. E. 257.

Instructions to jury as to, considered. *Hamilton*, 18 A. 295, 89 S. E. 449. Offer to return money, no defense. *Ib.*

Intent to restore money, and subsequent settlement, not prevent conviction. *Orr*, 6 A. 629, 65 S. E. 582.

Law constitutional. Jurisdiction of bank officer committing, without the State. *Carter*, 143/632, 633, 85 S. E. 884.

Motive for, evidence as to. *Bridges*, 103/21, 29 S. E. 859.

No error in charging jury that if the accused falsified his account, this would be a circumstance that the jury might consider, etc. *Truehart*, 13 A. 79 S. E. 755.

Not committed by one paying money to the person entitled to it, though on a wrong account; tax-collector using taxes to pay shortage of former tax-collector, and thus causing shortage in his own accounts, not guilty. *Gibson*, 13 A. 459, 79 S. E. 354.

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Not necessary to prove purchase of particular article, with money embezzled. *Truehart*, 13 A. 662, 79 S. E. 755.

Of county funds, indictment alleging, not supported by proof that funds misappropriated belonged to city in county. *Bridges*, 103/21, 29 S. E. 859.

Of public-school fund by county school commissioner; rulings as to evidence. *Bridges*, 110/246, 34 S. E. 1037.

Omission of instruction to jury as to intent to steal, not cause for new trial, here. *Cason*, 16 A. 820, 86 S. E. 644.

One disconnected with the employer corporation may be guilty of, as principal in second degree or accessory. *Bishop*, 118/799, 45 S. E. 614.

Prosecution not barred by statute of limitations. *Mangham*, 11 A. 428, 438, 75 S. E. 512. Proof of barred acts admissible to show fraudulent intent. *Ib.*

Receipt for money collected by defendant for corporation named in indictment, admitted in evidence, though the indictment did not relate to that money. *Hamilton*, 18 A. 295, 89 S. E. 449.

Repayment of stolen funds. *Bridges*, 103/21, 29 S. E. 859.

Temporary individual use of trust fund, a wrongful conversion, notwithstanding intent to return it; fraudulent intent inferred. *Mangham*, 11 A. 427, 75 S. E. 512.

Employee, attempt to prevent from remaining in employment. *Robbins*, 119/570, 46 S. E. 834. Employing or enticing servant or tenant already under contract, unlawful. *Johnson*, 134/25, 67 S. E. 423.

Interference with, by intimidation. *Binyard*, 126/636, 55 S. E. 498. Attempt to entice away. *Hudgins*, 126/639, 55 S. E. 492.

Interference with; one may be convicted of attempt to entice away servant, cropper, or farm laborer, though

the attempt be unsuccessful. *Bright*, 4 A. 333, 61 S. E. 289.

Of another hired, or relation with employer disturbed; act of 1901 as to, as amended, construed. *McBride*, 128/473, 57 S. E. 789; see *Caldwell*, 117/775, 45 S. E. 41. What necessary to authorize recovery of attorney's fees, against prosecutor under act of 1901. *Jones*, 1 A. 759, 57 S. E. 1061. Act of 1901, unconstitutional. *Fortune*, 12 A. 702, 78 S. E. 201. Employing another's servant, in violation of act of 1903. *Perry*, 1 A. 542, 58 S. E. 60. Constitutionality of acts of 1901 and 1903 as to. *Pearson*, 6 A. 254, 64 S. E. 1000. Part unconstitutional. *Rusher*, 6 A. 786, 65 S. E. 800. To be strictly construed. *Ib.* Conviction set aside for lack of proof of specific contractual relation. *Ib.* Acts of 1901 and 1903, construed strictly; essentials of the contract. *Orr*, 4 A. 382, 61 S. E. 518.

Offense of enticing servant away, not committed where the servant was a minor bastard, whose mother had not refused to support him, and had not consented to the contract of service. *Perry*, 113/936, 39 S. E. 315. Evidence insufficient that servant left in company with accused. Irrelevant declaration of accused that he would not live with prosecutor. *Broughton*, 114/34, 39 S. E. 866. Servant, enticing, persuading, or decoying; evidence not sufficient for conviction. *McAllister*, 122/744, 50 S. E. 921.

Entering house with intent to steal, facts not sufficient to convict of. *Coleman*, 122/135, 50 S. E. 56. Conviction authorized. Plea of former acquittal, not good. *Dunham*, 21 A. 789, 791, 95 S. E. 269.

Enticing child away from parent; meaning of "enticing." Fraudulent when without consent of parent. *Bryant*, 21 A. 668, 670, 94 S. E. 856.

Escape, and failure to surrender, forfeits right to hearing on appeal or writ of error. *Staten*, 140/110, 78 S. E. 766.

Aiding; offense committed by assisting prisoner from city chain-gang to elude recapture. *Smith*, 8 A. 297, 68 S. E. 1071. Proof necessary that accused knowingly aided. *Harvey*, 8 A. 660, 70 S. E. 141.

By one whose imprisonment is not part of a sentence imposed by a court, but is for safe-keeping only, is no crime. *Welch*, 4 A. 388, 61 S. E. 496.

Conviction of aiding, warranted. *Anglin*, 14 A. 566, 81 S. E. 804.

Conviction of, affirmed. *Collins*, 120/849, 48 S. E. 312.

Crime of, when complete; difference between code provisions as to escapes. *Smith*, 8 A. 297, 68 S. E. 1071. Escape from chain-gang of municipal or misdemeanor convicts is a continuous crime until the prisoner is retaken. *Ib.*

Effort or intent to effect, when admissible. *Bines*, 118/327, 45 S. E. 376, 68 L. R. A. 33.

From chain-gang controlled and managed by private persons, who pay guards appointed by county authorities, is no offense. *Daniel*, 114/533, 40 S. E. 805.

From county chain-gang, is not felony. *Taylor*, 108/391, 34 S. E. 2.

"Trusty," leaving lawful chain-gang to avoid unmerited punishment, and thereafter paying fine to sheriff, guilty of. *Johnson*, 122/172, 50 S. E. 65.

Unlawful shooting to prevent. *Holmes*, 5 A. 166, 62 S. E. 716.

Exchange treated as sale, under statute prohibiting sale. *McDuffie*, 19 A. 39, 90 S. E. 740.

Extortion by constable collecting costs in peace-warrant case before bond returned to superior court. *Levar*, 103/42, 29 S. E. 467.

By officer, not committed where the office had no existence under the constitution nor by color of legislative enactment. *Herrington*, 103/318, 29 S. E. 931, 68 Am. St. R. 95.

Defined; arresting officer's acceptance of money as "cash bond," in lieu of appearance bond, under belief that

he was authorized to accept it, not extortion. *Holt*, 11 A. 36, 74 S. E. 560.

Intention not gist of offense. *Levar*, 103/59, 29 S. E. 467.

Of money by threats. *Cook*, 22 A. 772, 97 S. E. 264.

See catchwords *Intent, Officer*.

False imprisonment, in working convicts, act of 1876 the only protection against prosecution for. *Penitentiary Co.*, 113/801, 39 S. E. 508.

Policeman convicted of, where arrest was made beyond jurisdiction of city. *Coker*, 14 A. 606, 81 S. E. 818.

False swearing, as basis of prosecution; insufficient evidence as to the taking of an oath. *Johnson*, 13 A. 589, 79 S. E. 524.

Conviction of, though oath known to be false, and administered for purpose of prosecution. *Thompson*, 120/132, 47 S. E. 566.

In promissory oath of official (election manager). *Norton*, 5 A. 586, 63 S. E. 662.

In pauper affidavit, to escape prepayment of costs. *Walker*, 112/412, 37 S. E. 749; *Sigman*, 112/576, 37 S. E. 894.

Not necessary that the oath should be material, or made to influence or mislead, or under circumstances that would influence or mislead. Difference between perjury and false swearing. *Gammage*, 119/380, 46 S. E. 409.

Prosecution for, no basis for action for malicious prosecution, under evidence here. *Woodruff*, 20 A. 639, 93 S. E. 316.

To teacher's report to school commissioners. *Thompson*, 118/330, 45 S. E. 410.

To teacher's report, what evidence admissible, and sufficient to convict of. Oath as basis for prosecution, what legal. *Thompson*, 120/132, 47 S. E. 566.

False writing, obtaining money by. *Gray*, 6 A. 428, 65 S. E. 191.

Obtaining money on; indictment sufficient; "writing," in Penal Code § 249,

includes check. *Saffold*, 11 A. 329, 332, 75 S. E. 338.

Uttering of, as true, with intent to defraud. *McLean*, 3 A. 660, 60 S. E. 332.

Fence destroyed; facts warranting conviction, under code section as to malicious mischief. *Woods*, 10 A. 476, 73 S. E. 608.

Pulling down, without consent of owner, conviction not warranted. *Shrouder*, 121/615, 49 S. E. 702.

Fertilizer, illegal sale of. *International Agricultural Corp.*, 17 A. 649, 87 S. E. 1101.

Seller's violation of law as to. *Arlington Oil & Guano Co.*, 13 A. 566, 79 S. E. 476.

Fictitious name to check, obtaining money by. *Sharp*, 7 A. 605, 67 S. E. 699; *Saffold*, 11 A. 329, 333, 75 S. E. 338.

Firearms, discharge of, on highway. *Wood*, 1 A. 685, 58 S. E. 271.

Firing woods, etc. Farmer burning off small area in usual course of husbandry, not negligently, though without previous notice, not guilty. *Acree*, 122/145, 50 S. E. 180.

Food mixed with broken glass with intent to have another swallow it, not eaten; not assault with intent to murder. *Leary*, 14 A. 797, 82 S. E. 471.

Forcible detainer, evidence sustaining conviction of. Joint defendant's conduct, evidence as to, when admissible on trial of his codefendant. *Lewis*, 105/657, 31 S. E. 576.

Facts constituting offense of, by one who took possession on tenant leaving premises. *Ellis*, 124/91, 52 S. E. 147.

Pendency of civil action for, irrelevant on trial of one indicted for. *Lewis*, 105/657, 31 S. E. 576.

Forcible entry and detainer, what necessary to constitute. *Cate*, 10 A. 665, 73 S. E. 1079.

What show of force sufficient to constitute. Resistance not essential. *Williams*, 120/488, 48 S. E. 149.

Forged check tendered but not passed. conviction upheld though indictment charged that it was passed. *Brazil*, 117/32, 37, 43 S. E. 460.

Forgery, and uttering and publishing as true, in a single indictment and trial. *Sims*, 110/290, 34 S. E. 1020. Forgery, or uttering as true any writing forged, with intent to defraud, is penal. Extrinsic facts relevant. *McLean*, 3 A. 660, 60 S. E. 332. Forgery and felonious uttering of check; when not necessary to allege intent to defraud particular person. *Brazil*, 117/32, 43 S. E. 460.

By filling printed blank to defraud; indictment and evidence sufficient. *Shope*, 106/226, 32 S. E. 140.

Check here apparently had legal efficacy, though indorsed, not in the payee's name, but in that of another. *Brazil*, 117/32, 43 S. E. 460.

Defined. *Barron*, 12 A. 346, 77 S. E. 214. Indictment sufficient. *Ib.* 342. Allegation as to value of articles described in forged instrument, not necessary here. *Ib.*

Different offenses referred to. *Saffold*, 139/121, 76 S. E. 858.

Error in charge to jury, and evidence insufficient. *Sessions*, 3 A. 13, 59 S. E. 196.

Evidence admissible on trial for: that accused was without means before, and had money after. *Walker*, 127/48, 56 S. E. 113, 8 L. R. A. (N. S.) 1175, 119 Am. St. R. 314.

Evidence corroborating accomplice in. *Curtis*, 16 A. 678, 85 S. E. 980. Instructions to jury as to, considered. *Raper*, 16 A. 123, 84 S. E. 560.

Evidence sufficient. Offer to pass instrument as genuine is evidence that accused did utter and publish. *Walker*, 127/48, 56 S. E. 113, 8 L. R. A. (N. S.) 1175, 119 Am. St. R. 314.

Evidence insufficient to warrant conviction of. *McCombs*, 109/496, 34 S. E. 1021; *Joiner*, 4 A. 59, 63 S. E. 801; *Brannon*, 21 A. 328, 94 S. E. 259; *Womble*, 107/666, 33 S. E. 630; *Fryer*, 12 A. 533, 77 S. E. 836. Forgery

and uttering the forged paper in separate counts; proper instruction to jury as to form of verdict. *Sellers*, 12 A. 687, 78 S. E. 196.

Evidence sufficient to show signing was with intent to defraud. *Allen*, 126/559, 55 S. E. 478.

Intent to defraud, not shown, conviction set aside. *Harrison*, 13 A. 31, 78 S. E. 686. Forged certificate of stock, conviction of uttering; proper instructions to jury. *Smith*, 13 A. 663, 79 S. E. 764.

Non-negotiability of altered check, no defense. *Wilson*, 7 A. 583, 67 S. E. 705. Forgery so badly executed as to be easily detected; no defense. *Ib.*

Not committed by immaterial alteration; figures in check, following words showing amount called for, were not material. *McIntosh*, 23 A. 513, 98 S. E. 555.

Not necessary to allege connection between person whose name was forged and person defrauded. *Barron*, 12 A. 342, 77 S. E. 214. Not necessary to allege or prove actual loss from. *Ib.*

Of bank checks, evidence insufficient. *Richard*, 127/42, 55 S. E. 1044.

Of check payable "to order of cash." *Hale*, 120/138, 47 S. E. 547. Misspelling of name of ostensible signer does not avoid. One count may charge forgery and uttering as true a forged paper. Evidence authorized conviction. *Hale*, 120/183, 47 S. E. 531.

Of option to buy land. *McLean*, 3 A. 660, 60 S. E. 332.

Of order for money in name of officer not authorized to draw an order. *Chambers*, 22 A. 749, 97 S. E. 256.

Possession of goods similar to those delivered on forged order, as a circumstance of guilt, insufficient, when. *McCombs*, 109/496, 34 S. E. 1021.

Semblance need not be exact. *Barron*, 12 A. 345, 77 S. E. 214. The writing must purport to be that of another than person making it; forgery not committed by one signing his name as agent of another, though not authorized to do so. *Ib.* 343.

Three grades of, considered. *Jordan*, 127/278, 56 S. E. 422.

Used as means to other crime does not confine guilt to first-named offense. *Currie*, 3 A. 309, 59 S. E. 926.

When committed by forging a paper not purporting to be signed. *Curtis*, 16 A. 678, 85 S. E. 980.

Writing sufficient as basis of conviction. *McLean*, 3 A. 660, 60 S. E. 332.

Writings which may be subject of forgery; rule that instrument which if genuine would not have legal efficacy can not be subject of forgery, discussed. *Chambers*, 22 A. 749, 97 S. E. 256; *Brazil*, 117/33, 43 S. E. 460.

Value sufficiently appeared. *Battle*, 122/575, 50 S. E. 342.

Knowingly passing forged instrument as genuine is conclusive of intent to defraud. *Jordan*, 127/278, 56 S. E. 422.

Obtaining money by forged or counterfeit writing, in fictitious name. *Sharp*, 7 A. 605, 67 S. E. 699.

Occupying land under forged title; limitations as to prosecution. *Coker*, 115/210, 41 S. E. 684.

Verdict, guilty "of uttering and publishing" the paper in question, was a nullity and amounted to an acquittal, because it failed to find that the paper was published as true and with fraudulent intent. *Ezzard*, 11 A. 30, 74 S. E. 551.

Objection that the paper could not have defrauded, not good here. *Nalley*, 11 A. 17, 74 S. E. 567. Forgery by attorney altering garnishee's answer, etc. *Ib.* 15.

Intent to defraud must be shown; error in not so instructing jury. *Blount*, 11 A. 239, 74 S. E. 1099.

Fornication; charge to jury that if they believe the parties "were in bed together, that would be a circumstance that would authorize them to convict;" no error. *McArthur*, 19 A. 747, 92 S. E. 234.

Charge as to, on trial for seduction. *Washington*, 124/427, 52 S. E. 910.

Child born as result of, shown by evidence. *Palmer*, 23 A. 85, 97 S. E. 460.

Circumstances authorizing inference of. *Smith*, 13 A. 242, 79 S. E. 51.

Circumstances warranting conviction. *Leatherman*, 11 A. 756, 76 S. E. 102. Testimony as to placing searchlight at window, and discovering man and woman in bed, not excluded as obtained by illegal search. *Ib.*

Circumstantial evidence here insufficient to show. *Murray*, 2 A. 620, 58 S. E. 1060. Confession, unconnected with specific act insufficient. *McAllister*, 2 A. 654, 58 S. E. 1110.

Conviction of, on indictment for seduction, not alleging that defendant was unmarried. *Boggs*, 11 A. 92, 74 S. E. 716.

Evidence not warranting conviction. *Seckinger*, 11 A. 797, 76 S. E. 167; *Lightner*, 126/563, 55 S. E. 471.

Evidence showing attempt to commit fornication with young girl, not assault with intent to rape. *Morrow*, 13 A. 189, 79 S. E. 63.

Evidence sufficient to convict of. Inaccuracy in charge to jury, when no cause for reversal. *Seats*, 122/173, 50 S. E. 65.

Evidence that the accused man and the woman lived together as man and wife and for months slept in a room with one bed was sufficient corroboration of his confession. *Wooster*, 21 A. 287, 94 S. E. 279.

Evidence warranting conviction of. *Bass*, 103/227, 29 S. E. 966.

Failure to define "fornication," in charge to jury on seduction, not error, in absence of request. *Hembree*, 17 A. 117, 86 S. E. 286.

Found on trial for seduction, though committed over two years before indictment. *Jinks*, 114/431, 40 S. E. 320.

Proof that both participants were unmarried, necessary to convict of; no presumption that a person is unmarried. *Neil*, 117/14, 43 S. E. 435. Pre-

sumption as to sexual capacity. **Ward**, 14 A. 113, 80 S. E. 295; **Bennett**, 103/67, 29 S. E. 919.

Fraud; damage an essential of legal fraud. **Mobley**, 13 A. 733, 79 S. E. 906.

Presumption of intent, and burden of proof. **Barnes**, 3 A. 333, 59 S. E. 937. Intent lacking, conviction illegal. **Rickerson**, 3 A. 443, 60 S. E. 114. Evidence relevant to show efficiency of means. **McLean**, 3 A. 660, 60 S. E. 332.

Fraudulent conversion of money paid for church-building fund. **Haupt**, 108/64, 33 S. E. 831.

Game law. Landowner's permission in such case would not dispense with license. **Smith**, 15 A. 536, 83 S. E. 886. Former decisions and effect of amendatory act of 1912 discussed. *Ib.*

Violation of law by fishing on another's land, without his permission, in navigable stream on which it abuts. **Robinson**, 12 A. 683, 78 S. E. 53.

Of 1896; in a prosecution thereunder for selling meat of a deer, the burden was on the State to show that the deer was wild. **Crosby**, 121/198, 48 S. E. 913.

Of 1911 is a substitute for all previous laws on the subject. **Allen**, 11 A. 79, 74 S. E. 706; **Hammond**, 10 A. 143, 72 S. E. 937; **Robinson**, 11 A. 847, 76 S. E. 1061; **Blassingame**, 11 A. 809, 76 S. E. 392.

Of 1911 violated by shooting at game mentioned therein, during the closed season. "Hunt" includes "shoot" and "shoot at." **Robinson**, 11 A. 847, 76 S. E. 1061.

Of 1911 construed; hunting on another's land without permission, unlawful; exception to this rule. **Blassingame**, 11 A. 809, 76 S. E. 392.

Sale, offer to sell, or possession of specified game during closed season, unlawful, whether taken or killed in or out of this State. **Allen**, 11 A. 75, 74 S. E. 706.

Importation of game for propagation not prohibited. **Allen**, 11 A. 79, 74 S. E. 706.

Opossums and raccoons are protected by act of 1911. **Baker**, 19 A. 84, 90 S. E. 983.

Power of State over game. **Allen**, 11 A. 75, 74 S. E. 706.

Penalty abrogated as to hunting or shooting on baited land, by amendment of 1912 to act of 1911. **Weaver**, 17 A. 738, 88 S. E. 414.

Violated by one hunting without license outside his own land and militia district, though following hounds in pursuit of fox therefrom. **Smith**, 15 A. 536, 83 S. E. 886.

Violation of, by shooting at doves on baited land. **Jones**, 17 A. 329, 86 S. E. 738.

Gaming, evidence showing guilt of. **Hicks**, 1 A. 772, 57 S. E. 958.

Admission of, when not made by silence. **Graham**, 118/807, 45 S. E. 616. Compare **Rivers**, 118/42, 44 S. E. 859.

Allegation that game played was "skin," proved by eye-witness describing game played, and one testifying from the description that it was "skin." **Scott**, 6 A. 567, 65 S. E. 359. Evidence warranting conviction. **Welsh**, 6 A. 783, 65 S. E. 815; **Kelly**, 6 A. 797, 65 S. E. 816.

Betting on horse race is. **Thrower**, 117/753, 45 S. E. 126.

Betting, wagering, gaming, gambling, distinction in. **Anderson**, 2 A. 1, 58 S. E. 401.

By playing "at a game of skin or other games played with cards," demurrable. **Haley**, 124/216, 52 S. E. 159. Dealing in futures as. **Miller**, 124/829, 53 S. E. 335, 4 Ann. Cas. 574.

By shooting craps. **Sims**, 1 A. 776, 57 S. E. 1029.

Charged in two counts; conviction upheld on evidence sustaining one. **Colquitt**, 6 A. 109, 64 S. E. 281.

Circumstances not warranting conviction; mere presence at game, and flight, not sufficient. *Benjamin*, 16 A. 376, 85 S. E. 349. Conviction warranted, though the evidence was weak and unsatisfactory. *Holifield*, 16 A. 250, 85 S. E. 81.

Circumstances not authorizing conviction of one present at game; former cases distinguished. *Freeman*, 21 A. 494, 94 S. E. 588.

Circumstances sufficient to show betting as well as playing; instruction that jury must be satisfied as to particular kind and name of game. not required here. *Warthen*, 8 A. 124, 68 S. E. 624.

Circumstances sufficient to show defendant was playing cards for money; failure to prove what game was played, immaterial, when. *Alford*, 15 A. 426, 83 S. E. 444. See *Twilley*, 9 A. 435, 71 S. E. 587; *Tyus*, 10 A. 23, 72 S. E. 509.

Circumstantial evidence of. *Grant*, 122/740, 50 S. E. 946.

Conviction authorized by evidence as to playing cards where there were "several little piles of money." *Strange*, 11 A. 265, 74 S. E. 1100. Facts constituting participation by bystander. *Couey*, 11 A. 415, 75 S. E. 445.

Conviction upheld on evidence that the accused, with others, played at cards for money; not necessary to show character of game, or who lost or won. *Arnold*, 117/706, 45 S. E. 59.

Evidence warranting conviction. *Powell*, 14 A. 425, 81 S. E. 254; *Goggans*, 14 A. 822, 82 S. E. 357; *Strickland*, 4 A. 445, 61 S. E. 841; *Jordan*, 4 A. 446, 61 S. E. 838; *Colbert*, 8 A. 407, 69 S. E. 315; *Power*, 8 A. 408, 69 S. E. 315; *Hall*, 12 A. 571, 77 S. E. 893; *Gordon*, 12 A. 710, 78 S. E. 204; *Simmons*, 17 A. 288, 86 S. E. 657; *Wells*, 17 A. 301, 86 S. E. 650; *Haynes*, 17 A. 416, 87 S. E. 29; *Banks*, 21 A. 505, 94 S. E. 625; *McFarlin*, 15 A. 504, 83 S. E. 795; *Haines*, 22 A. 274, 95 S. E. 875; *Boaz*, 123/502, 51 S. E. 504; *Davis*, 123/502, 51 S. E. 501; *Hudson*, 117/704, 45 S. E. 66.

Evidence not warranting conviction. *Hicks*, 16 A. 228, 84 S. E. 837; *Simmons*, 106/355, 32 S. E. 339; *Nix*, 15 A. 470, 83 S. E. 876; *Kemp*, 8 A. 97, 68 S. E. 558; *Varner*, 8 A. 473, 69 S. E. 589; *Cox*, 7 A. 22, 65 S. E. 1062; *Wilson*, 7 A. 200, 66 S. E. 382.

Former conviction, error in allowing State to introduce evidence as to, in rebuttal of statement of accused. *Grace*, 19 A. 606, 92 S. E. 231.

"Gambling" defined. *Fleming*, 125/18, 53 S. E. 579. Evidence insufficient to convict of. *Ib.* Statement that accused was "gambling" was a mere conclusion. *Ib.* Game sufficiently described by indictment charging playing and betting for money "at a game played with cards." *Slade*, 125/788, 54 S. E. 750.

When not "disorderly conduct." *Garvin*, 15 A. 635, 84 S. E. 90.

Illegal arrest of accused no defense on trial for. *Mitchell*, 126/85, 54 S. E. 931.

Immaterial whose money was put up in game played by accused. *Kincaid*, 13 A. 683, 79 S. E. 770.

With cards and dice, accusation of, not supported by proof of games played with dice only. *Woody*, 113/928, 39 S. E. 297. Indictment charging different kinds conjunctively ("cards, dice, and balls"), supported by proof of one kind. 113 Ga. 928, disapproved. *Hubbard*, 123/17, 51 S. E. 11; *Simmons*, 17 A. 289, 86 S. E. 657.

Judge's statement, in approving brief of evidence, that "the game of skin was more fully demonstrated to the court than the description in the brief," not considered. *Hicks*, 16 A. 228, 84 S. E. 837.

Law violated by operation of slot-machine which, on deposit of a nickel, supplied chewing gum of that value, there being a chance that the depositor would win trade-checks which could be exchanged for beer. *Alexander*, 13 A. 354, 79 S. E. 177.

Newly discovered evidence requiring new trial. *Williams*, 11 A. 21, 74 S. E.

448. Assembling for purpose of gaming, not "disorderly conduct," for which city may punish. *Sheppard*, 11 A. 811, 76 S. E. 367.

Participation inferred from presence at, and possession of cards or money. *Griffin*, 5 A. 43, 62 S. E. 685.

Playing and betting at cards for money, evidence sufficient to convict of. *Harmon*, 120/197, 47 S. E. 547; *Frost*, 120/311, 47 S. E. 901. At dice; conviction supported by testimony of witness of bad character, whose credibility was attacked. *Sindy*, 120/202, 47 S. E. 554.

Playing pool is, under agreement for loser to pay for use of table. *Hopkins*, 122/583, 50 S. E. 351, 69 L. R. A. 117, 2 Ann. Cas. 617.

Plea of former conviction of, good, though the first case involved a separate transaction. *McCoy*, 121/359, 49 S. E. 294.

Presence and flight do not prove participation in, without more. *Griffin*, 2 A. 534, 58 S. E. 781. Evidence authorized conviction. *Butler*, 2 A. 623, 58 S. E. 1114. Not where no time proved. *Tharpe*, 2 A. 649, 58 S. E. 1070.

Renting room for, testimony admissible on trial for. Verdict demanded by evidence. *Bashinski*, 122/164, 50 S. E. 54; *Bashinski*, 123/509, 51 S. E. 499.

Reputation of room as a gaming place, testimony as to, admitted on trial of one charged with gaming here. *Pritchett*, 20 A. 189, 92 S. E. 948. Conviction warranted. *Ib.*; *Bell*, 20 A. 175, 92 S. E. 950.

Sufficiency of circumstances to convict. *Allen*, 13 A. 657, 79 S. E. 769. Conviction warranted. *Cook*, 13 A. 308, 79 S. E. 87; *Curry*, 13 A. 658, 79 S. E. 771.

Testimony affirming and denying, equally positive. *Phillips*, 1 A. 687, 57 S. E. 1079.

Three counts, no evidence to support two of them, general verdict of guilty, not sustainable. *Driver*, 112/229, 37 S. E. 400.

See catchwords, Betting.

Gaming-house articles seized, not recoverable. *Robertson*, 1 A. 223, 57 S. E. 993.

Circumstances not warranting conviction of keeping gaming-house. *Phillips*, 19 A. 143, 91 S. E. 234. Character of place as gaming-house, not established by proof that it was frequented by persons reputed to be gamblers. *Ib.*

Circumstantial evidence as to keeping; proper charge to jury. *Rosenthal*, 126/558, 55 S. E. 497.

Conviction of keeping, not warranted. *White*, 115/570, 41 S. E. 986.

Conviction of keeping, warranted. *Dudley*, 18 A. 509, 89 S. E. 599; *Robinson*, 18 A. 703, 90 S. E. 287; *Stewart*, 18 A. 717, 90 S. E. 369.

Evidence as to reputation of hotel as gaming-house, admitted. *Dudley*, 18 A. 509, 89 S. E. 599.

Evidence showing knowledge of landlord's renting agent. *Rivers*, 118/42, 44 S. E. 859. Charge as to, not cause for new trial, where evidence demanded verdict. *Monahan*, 118/66, 44 S. E. 816.

Failure to give a certain instruction to jury as to, not error in absence of request. *Bluhakis*, 18 A. 113, 88 S. E. 911.

General verdict of guilty, under accusation charging offense in different ways and evidence as to one way, upheld. *Bluhakis*, 18 A. 112, 88 S. E. 911.

"If defendant did anything which contributed to the maintenance or keeping," etc., construed with context of charge, not error. *Rosenthal*, 126/559, 55 S. E. 497.

Keeping not shown by single instance of gaming. *White*, 115/571, 41 S. E. 986.

Keeping of; evidence sufficient to convict officer of social club. **Cochran**, 102/631, 29 S. E. 438.

Keeping not shown by a single act of gaming. Permitting use of house, for a consideration, on a single night, for gaming, violates Penal Code, § 389. **Atterberry**, 4 A. 336, 61 S. E. 296.

Single act, in connection with other circumstances, may authorize conviction of keeping such a house. **Bluhakis**, 18 A. 112, 88 S. E. 911.

Kept by agent of non-resident for congregation of persons to bet on races. **Jones**, 120/185, 47 S. E. 561. Proof of keeping, or of maintaining, supports allegation in conjunctive. Charges to jury correct, and verdict demanded. **Bryan**, 120/201, 47 S. E. 574.

Kept by bucket-shop or office for dealing in futures. **Anderson**, 2 A. 1, 58 S. E. 401. Intimation of opinion by judge in charge to jury, error. **Butler**, 2 A. 397, 58 S. E. 685.

Maintaining place for betting, etc., violates law as to. **Thrower**, 124/1, 52 S. E. 76, 1 L. R. A. (N. S.) 483, 110 Am. St. R. 147, 4 Ann. Cas. 1. License tax paid on, exempts licensee from penal statute in other States. **Miller**, 124/831, 53 S. E. 335, 4 Ann. Cas. 574.

Law as to keeping, violated by one allowing others to play a game of chance, for a thing of value, in room under his control. **Alexander**, 13 A. 354, 79 S. E. 177.

Not necessary that the gaming be criminal, in order to convict of keeping. **Thrower**, 117/753, 45 S. E. 126.

One doing any act connected with or in aid of keeping gaming-house may be convicted of keeping; proper charge to jury. **Ponder**, 18 A. 703, 90 S. E. 365.

Proper instruction; evidence warranting conviction. **Groves**, 123/570, 51 S. E. 627.

Time of act proved, uncertain, proper instruction to jury. **Levan**, 125/278, 54 S. E. 173.

"Turf exchange" was, though the betting was on races run in another State. **Thrower**, 117/753, 45 S. E. 126.

Facts shown by course of dealing, when override declared intention of parties. **Anderson**, 2 A. 1, 58 S. E. 401.

Circumstances sufficient to put owner of house on notice that it is used for. **Bashinski**, 123/511, 512, 51 S. E. 499. Highway, discharging firearms on; evidence warranting conviction. Testimony that road "was a public road used by the public," prima facie proof that it was public road or highway. **Chapman**, 7 A. 821, 68 S. E. 271.

Hire, keeping for, sufficiently shown by circumstances here. **Beatty**, 15 A. 515, 83 S. E. 885.

Hiring laborers. See catchwords "Emigrant agent," supra.

Hog, killing of. **Paulk**, 2 A. 660, 662, 58 S. E. 1108, 1109.

Malicious killing of; evidence not warranting inference of malice. **Crowder**, 10 A. 355, 73 S. E. 424.

Mark altered; conviction warranted. **Miller**, 9 A. 170, 70 S. E. 891.

Hog-stealing, bona fides of taking being in issue, charge on intention held error. **Lee**, 102/223, 29 S. E. 264.

Charge to jury not error; circumstantial evidence sufficient for conviction. **Addis**, 120/180, 47 S. E. 505.

Conviction not warranted. **Winnoms**, 11 A. 21, 74 S. E. 440; **Moulton**, 8 A. 380, 69 S. E. 32. When not committed by stealing dead hog. **Moses**, 8 A. 446, 69 S. E. 575; **Smith**, 11 A. 385, 75 S. E. 447; **Paulk**, 5 A. 567, 63 S. E. 659.

Conviction set aside for lack of evidence of animus furandi. **Williams**, 10 A. 142, 72 S. E. 719.

Conviction upheld. **Baker**, 6 A. 785, 65 S. E. 815.

Distinction between hog-stealing and simple larceny should have been explained to jury here. **Moses**, 8 A. 446, 69 S. E. 575. Conviction warranted. **Green**, 8 A. 574, 70 S. E. 26.

Evidence warranting conviction. *Harper*, 9 A. 202, 70 S. E. 968. Circumstances sufficient as to venue, etc. *Cook*, 9 A. 208, 70 S. E. 1019.

Hogs not sufficiently identified, conviction set aside. *Stewart*, 9 A. 501, 71 S. E. 755.

Not shown by evidence here as to running after trespassing hog and shooting it. *Fulmore*, 8 A. 704, 70 S. E. 77. Circumstances authorizing inference of intent to steal, not merely to kill hog. *Paulk*, 8 A. 704, 70 S. E. 50.

Possession of hog explained by uncontradicted witness, conviction set aside. *Peebles*, 5 A. 706, 63 S. E. 719.

Homicide.

Accident or misadventure, charge of court as to, not ground for reversal in homicide case, when. *Brinson*, 22 A. 651, 97 S. E. 102.

As defense of homicide. *Warren*, 140/228, 78 S. E. 836; *Jones*, 140/478, 79 S. E. 114.

Homicide by, or murder, issue as to. *Sims*, 144/91, 86 S. E. 230.

Suggested by statement of accused; negated by evidence. *Golatt*, 130/20, 21, 60 S. E. 107; *Johnson*, 130/27, 60 S. E. 160; *Toomer*, 130/66, 60 S. E. 198; *Lyles*, 130/294, 60 S. E. 578.

Defense that killing was by. *Jones*, 18 A. 285, 89 S. E. 303; *Green*, 18 A. 677, 90 S. E. 284; *Clonts*, 18 A. 707, 90 S. E. 373.

Killing by culpable negligence is not. *Baker*, 12 A. 554, 77 S. E. 884.

Charge of court on theory of, authorized by defendant's statement, though the statement was so uncertain as to leave it in doubt whether he relied on that theory. *Cook*, 22 A. 266, 96 S. E. 393.

Evidence not requiring charge to jury as to. *August*, 20 A. 168, 92 S. E. 956; *Knight*, 12 A. 116, 76 S. E. 1047.

Homicide—(Continued.)

No basis for theory that killing with hoe was result of. Cases distinguished. *Cox*, 21 A. 238, 94 S. E. 47.

Evidence warranting rejection of theory of. *Beddingfield*, 13 A. 623, 79 S. E. 581.

Killing of one by, while shooting at another, murder, when. No error in charging jury on theory of intent to kill the one not shot at. *Griffin*, 18 A. 463, 89 S. E. 537.

Admission of homicide, but justification shown by facts stated with the admission; further evidence necessary to authorize conviction. *Wall*, 5 A. 308, 63 S. E. 27.

Of homicide, charge implying error. *Young*, 125/588, 54 S. E. 82.

Adultery, or indecent proposal to wife, as cause of homicide. *Rossi*, 7 A. 732, 68 S. E. 56.

As cause of homicide. *Putnam*, 21 A. 537, 94 S. E. 862; *Jordan*, 16 A. 393, 399, 85 S. E. 455; *August*, 20 A. 168, 92 S. E. 956; *Shields*, 22 A. 618, 97 S. E. 90; *O'Shields*, 125/310, 54 S. E. 120.

Killing of wife taken in act of, law as to, not applied to like killing of mistress. *Cyrus*, 102/618, 29 S. E. 917.

Aiding and abetting, language of charge of court as to, too broad, in not being expressly confined to aiding and abetting codefendant. *Brown*, 17 A. 300, 86 S. E. 661. Conviction of accused, present aiding and abetting. *Johnson*, 147/546, 97 S. E. 515.

Another, homicide in defense of; legal right of mutual defense, not extend to brother-in-law. *Gillis*, 8 A. 696, 70 S. E. 53.

Arrest, killing to prevent. *Harper*, 129/770, 59 S. E. 792; *Williford*, 121/173, 48 S. E. 962; *McDuffie*, 121/580, 49 S. E. 708. Homicide by one attempting arrest. *Coleman*, 121/594, 49 S. E. 716.

Homicide—(Continued.)

Unlawful homicide in resistance of. *McCray*, 134/416, 426, 68 S. E. 62, 20 Ann. Cas. 101. Murder in resistance of lawful arrest. *Cason*, 134/787, 68 S. E. 554.

Homicide in resistance of, when murder and not manslaughter. *Johnson*, 130/27, 60 S. E. 160.

Homicide in resisting; when justifiable. *Holmes*, 5 A. 166, 62 S. E. 716; *Perdue*, 5 A. 821, 63 S. E. 922.

Homicide in making or resisting. *Dover*, 109/485, 34 S. E. 1030; *Delegal*, 109/518, 35 S. E. 105.

Homicide in resistance of. *Rushing*, 135/224, 69 S. E. 171.

Homicide by arresting officer. *Cooner*, 16 A. 539, 85 S. E. 688.

Homicide in making, by private person without warrant. *Delegal*, 109/518, 35 S. E. 105.

Citizen killed while assisting officer to make illegal arrest in felonious manner, justifiable homicide, when. *Holmes*, 5 A. 166, 62 S. E. 716.

Assault with intent to murder, facts authorizing conviction of, in homicide case; error in refusing to charge jury as to that offense. *Pope*, 13 A. 711, 79 S. E. 909.

No case of separate and independent assaults presented by facts of homicide. *Drew*, 136/658, 662, 71 S. E. 1108.

Attack on slayer by deceased with fist, or with brass knucks; proper instructions to jury. *Tanner*, 21 A. 189, 190, 192, 94 S. E. 67.

Obligation to retreat, when not on person attacked. *Glover*, 105/598, 31 S. E. 584.

Ax, shooting one who was advancing with, when too far to use it, and not making effort to do so, not justified. *Prater*, 8 A. 437, 69 S. E. 496.

Beginning the difficulty; charge of court as to effect of, considered. *Love*, 14 A. 50, 80 S. E. 209.

Biting another's finger, whether justification for homicide; charge of

Homicide—(Continued.)

court considered. *Love*, 14 A. 49, 50, 80 S. E. 209.

Brass knucks, homicide by one attacked with. *Tanner*, 21 A. 189, 190, 192, 94 S. E. 67.

Brick, homicide by use of. *Watson*, 21 A. 637, 94 S. E. 857.

Brother, homicide in defense of. *Mosley*, 11 A. 4, 7, 74 S. E. 569; *Garnier*, 6 A. 789, 65 S. E. 842; *Sheffield*, 16 A. 287, 85 S. E. 253.

Proper charge as to right to defend. *Swain*, 15 A. 445, 83 S. E. 642.

Law as to defense of, not applicable here. *Taylor*, 13 A. 689, 79 S. E. 862.

Brother-in-law, killing in defense of. *Gillis*, 8 A. 696, 70 S. E. 53.

Burden of proving justification, mitigation, or excuse for, if not shown by evidence for State. *Jordan*, 143/449, 85 S. E. 327.

On accused "to justify or mitigate the homicide," charge not error here. *White*, 125/256, 54 S. E. 188.

Error in placing, on accused, by charging jury that if they believed beyond reasonable doubt that certain things were true, the homicide would be justifiable. *McDonald*, 12 A. 526, 77 S. E. 655.

Bystander killed by shot fired at another person, latter allowed to testify to his intent to kill the accused. *Johnson*, 12 A. 493, 77 S. E. 587.

Character of the deceased, admissibility of testimony as to. *Chewning*, 18 A. 11, 88 S. E. 904.

For violence, shown by general reputation, not by particular acts or conviction of crime of violence. *Alexander*, 8 A. 531, 69 S. E. 917.

Charge of court authorizing conviction on proof of killing with brick, not error, though indictment alleged killing with bottle. *Watson*, 21 A. 637, 94 S. E. 857.

Homicide—(Continued.)

Of malice; assignment of error too general as to. *Early*, 14 A. 471, 81 S. E. 385.

Referring to the killing as "homicide," not error. *Griggs*, 17 A. 302, 86 S. E. 726.

That "provocation by words, threats, menaces, "etc., shall "in no case" be sufficient to free from the crime of murder (Penal Code, § 65), was not subject to the exception that it was not properly qualified or explained. *Deal*, 18 A. 70, 88 S. E. 902; *Buxton*, 19 A. 331, 91 S. E. 490.

Not mentioning theory of defense until about to conclude, and then briefly, with remark that court "did not think" to call attention to it; reversal. *Smith*, 109/480, 35 S. E. 59.

Adjusted to particular facts relied on as defense, reversal for refusing request for, though the law was charged abstractly. *Alexander*, 8 A. 531, 69 S. E. 917.

Error in omitting, after statement of contentions of accused, an instruction that if the jury found that in cutting and shooting he acted in self-defense and was justifiable (as contended) they would be authorized to acquit him. *Harrison*, 20 A. 160, 92 S. E. 970.

Question in, "if the party shot had died, what would be the offense. murder or manslaughter?" not error; when considered with context. *Mosley*, 11 A. 4, 7, 74 S. E. 569.

Proper, as to self-defense and justifiable homicide. *Taylor*, 121/355-7, 49 S. E. 303.

That if the person killed was attacking the accused with a weapon likely to produce death, it would be a felony, and "would reduce the crime from murder to some other crime," if not justifiable entirely throughout; not subject to exception taken. *Swilling*, 18 A. 619, 90 S. E. 78.

As to whether justifiable homicide, or whether manslaughter or murder.

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properly submitted. *Darby*, 144/759, 87 S. E. 1067.

That the jury should look to the circumstances "at the very" time of the homicide, to see whether it was justifiable, was error, as it might be reduced to manslaughter through passion aroused at a former time. *Nixon*, 14 A. 261, 80 S. E. 513.

Inaccurate, as to homicide, here not cause for new trial. *Tuggle*, 119/969, 47 S. E. 577.

That jury might acquit if satisfied, by preponderance of testimony, that the accused acted in self-defense or was otherwise justified, error. *Williams*, 12 A. 337, 77 S. E. 189.

As to effect of evidence that defendant had a pistol, considered. *Walker*, 21 A. 193, 94 S. E. 60.

Omission of, on § 76 of Penal Code, as to acquittal where the homicide appears to be justifiable. *Thorn-ton*, 18 A. 746, 90 S. E. 489.

Giving §§ 70, 71 of Penal Code in immediate connection, error; not harmful here. *Mixon*, 15 A. 252, 82 S. E. 936.

Confusing law embodied in Penal Code, § 73, with that contained in §§ 70, 71, error. *Smith*, 119/564, 46 S. E. 846; *Jordan*, 117/405, 13 S. E. 747; *Darby*, 16 A. 172, 84 S. E. 724; *Dunn*, 16 A. 9, 84 S. E. 488; *Nunn*, 14 A. 695, 82 S. E. 56; *Ellis*, 21 A. 499, 94 S. E. 629. On Penal Code, § 73, error here. *Howard*, 115/251, 41 S. E. 654. Penal Code, §§ 70, 71, properly given in charge with § 73, when. *Dover*, 109/486, 34 S. E. 1030.

Child, parent's right to protect, by homicide. *Miller*, 9 A. 599, 71 S. E. 1021.

Circumstances warranting conviction. *Crawford*, 15 A. 15, 82 S. E. 356.

Clothing of person killed, and pistols, sent out with jury; no ground for new trial, when. *Weldon*, 21 A. 332, 94 S. E. 326.

Homicide—(Continued.)

Code sections as to homicide not confused in charge to jury. *Faison*, 13 A. 181, 79 S. E. 39.

Error in charging in language of, as to homicide. *Manson*, 14 A. 838, 82 S. E. 763; *Nunn*, 14 A. 695, 82 S. E. 56; *Jackson*, 14 A. 608, 81 S. E. 905; *Burnsed*, 14 A. 832, 82 S. E. 595.

Section 73 applies where both parties were at fault. *Nunn*, 14 A. 697, 698, 82 S. E. 56. Explanations which should be given on reading different code sections on homicide. *Id.* 699.

Compromise verdict set aside. *Killebrew*, 12 A. 726, 78 S. E. 205.

Conduct and statement of accused immediately after homicide, when not admissible in evidence. *Gibbons*, 137/786, 74 S. E. 549.

Conflict of decisions settled by answer of Supreme Court to certified questions. *Deal*, 18 A. 70, 88 S. E. 902. And see *Mulling*, 18 A. 205, 89 S. E. 221; *Mason*, 18 A. 224, 89 S. E. 185; *Hill*, 18 A. 259, 89 S. E. 351; *Mulligan*, 18 A. 465, 471, 89 S. E. 541; *Harris*, 18 A. 752, 90 S. E. 491.

Consent and concurrence, in homicide, not conclusively shown by mere presence and participation in general transaction that results therein. *Futch*, 137/75, 72 S. E. 911.

Conspiracy; doubtful admissibility of conduct two weeks before homicide. *Andrews*, 145/14, 88 S. E. 194.

Convict slew fellow-convict; issue as to grade of homicide. *Westbrook*, 133/578, 66 S. E. 788, 18 Ann. Cas. 295.

"Cooling time," omission to read language of statute as to, no error, where law of voluntary manslaughter was correctly given in charge. *Webb*, 8 A. 430, 69 S. E. 601.

Proper charge as to. *Wimberly*, 13 A. 671, 79 S. E. 767.

To be determined by jury; error in using the words "appreciable

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time," in charging jury as to. *Wimberly*, 12 A. 541, 77 S. E. 879.

Whether sufficient, a jury question. *Robinson*, 10 A. 463, 73 S. E. 622; *Taylor*, 13 A. 720, 79 S. E. 924; *Nixon*, 14 A. 263, 80 S. E. 513; *Hightower*, 14 A. 248, 80 S. E. 684; *Booker*, 16 A. 284, 85 S. E. 255; *Morris*, 18 A. 759, 90 S. E. 729; *White*, 118/787, 45 S. E. 595; *Williams*, 130/400, 60 S. E. 1053; *Mize*, 135/298, 69 S. E. 173; *Miller*, 139/723, 78 S. E. 181.

Daughter, debauchery of, as cause of homicide. *Putnam*, 21 A. 537, 94 S. E. 862.

Seduction or debauchery of, cause of attack; instructions to jury. *Brown*, 10 A. 50, 72 S. E. 537.

Seduction or debauchery of minor daughter, as defense of homicide. *Gossett*, 123/431, 51 S. E. 394.

Sexual intercourse with, as cause of homicide. *Miller*, 9 A. 599, 71 S. E. 1021.

Debauchery, abuse, and slapping of, as cause of homicide. *McPhearsen*, 19 A. 232, 91 S. E. 336.

Deceased mistaken for trespassing animal. *Parks*, 105/248, 31 S. E. 580.

Declaration of slayer, "several minutes after" shooting, that it was accidental, excluded from evidence. *Cobb*, 11 A. 53, 69, 74 S. E. 702.

Of deceased, shortly before homicide, admissibility of. *Smith*, 148/467, 96 S. E. 1042.

Defenses under Penal Code, §§ 70, 71, 73, should not be confused in charge to jury; § 73 applies only to defense of life in fight where both parties are at fault. *McAllister*, 7 A. 541, 67 S. E. 221; *Franklin*, 146/40, 90 S. E. 480; *Waters*, 146/102, 90 S. E. 712; *Warrick*, 125/133, 53 S. E. 1027; *Mills*, 133/155, 65 S. E. 368; *Hall*, 133/177, 65 S. E. 400. *Smalls*, 148/538, 97 S. E. 538.

Homicide—(Continued.)

- Under Penal Code § 73, properly given in charge to jury, in view of evidence as to mutual combat. *Stevens*, 8 A. 218, 68 S. E. 874.
- Disparity in size and strength of slayer and slain; refusal to charge jury as to, not error, in absence of evidence. *Thompson*, 20 A. 178, 92 S. E. 959.
- Distinction between justifiable and excusable homicide, abolished; refusal to charge as to when it would be "excusable," not error. *Mixon*, 123/582, 584, 51 S. E. 580, 107 Am. St. R. 149.
- Drugs, homicide by unlawful administration of. *Silver*, 13 A. 722, 79 S. E. 919.
- Drunkenness, as affecting criminality. *Knight*, 12 A. 112, 76 S. E. 1047; *Gaynor*, 12 A. 601, 606, 607, 77 S. E. 1072.
- Of slayer as illustrating *quo animo*. *Dunn*, 16 A. 9, 84 S. E. 488.
- Of person shooting recklessly without specific intent to kill. *Gaskin*, 11 A. 11, 12, 74 S. E. 554.
- Of accused, admissibility of evidence as to. *Mulligan*, 18 A. 465, 471, 89 S. E. 541.
- Escaping convict, homicide of arresting officer by. *Harper*, 129/770, 59 S. E. 792.
- Estoppel of defendant to object to verdict, after having procured a decision that the judge erred in refusing to receive it and in receiving a subsequent verdict for a higher grade of homicide. *Register*, 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142.
- Exception that court erred in giving charge of § 73 of Penal Code, in that it was confused with law of justifiable homicide, insufficient in not pointing out error. *Webb*, 8 A. 432, 69 S. E. 601.
- Expert testimony, not necessary to authorize finding that death was caused by blow inflicted by deadly weapon several days before death. *Brown*, 10 A. 216, 73 S. E. 33.

Homicide—(Continued.)

- Failure to read code-section as to justifiable homicide as a defense, in charging jury not error, sufficient instructions being given as to that defense. *Driskell*, 20 A. 174, 92 S. E. 1007.
- To define "justifiable homicide," in charging jury; not error, when. *Carver*, 14 A. 267, 80 S. E. 508.
- To define "felony," or "serious personal injury," as used in charge on law of self-defense, not cause for new trial, when. *Cook*, 22 A. 266, 96 S. E. 393.
- Family, defense of, facts not authorizing charge to jury as to. *District Grand Lodge*, 18 A. 612, 89 S. E. 1094.
- Fault of defendant in provoking attack on himself; charge as to, considered. *Swain*, 15 A. 445, 83 S. E. 642. Proper form of charge as to. Charge not authorized by evidence. *Bennett*, 19 A. 442, 91 S. E. 889. When error to charge as to. *Davis*, 14 A. 766, 82 S. E. 297.
- That accused must be without, at time of homicide, refers to justification, not reduction of grade. *Campbell*, 144/224, 87 S. E. 277.
- Fear and hatred of race (Chinese), as affecting mind and conduct of slayer. *McDonald*, 23 A. 58, 97 S. E. 448.
- Feeling of accused against wife of deceased, irrelevant. *Darby*, 16 A. 172, 84 S. E. 824.
- Of deceased against his wife whom he was seeking at defendant's house when killed, error in excluding evidence as to. *Amos*, 14 A. 590, 81 S. E. 903.
- Felony, killing to prevent, not shown by shooting at one who ran off with land deed. *Wiggins*, 101/502, 29 S. E. 26.
- Justification of homicide by apparent danger of. *Nail*, 142/595, 83 S. E. 226.
- On person, homicide to prevent, *Butler*, 142/286, 82 S. E. 654; *Hickman*, 142/630, 83 S. E. 508; *Byrd*,

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142/633, 83 S. E. 513, 54 L. R. A. 1916B, 1145.

On person, homicide to prevent; grade of felony attempted, immaterial. Error in charging that, to justify homicide, it must be necessary in order to save life. *Ragland*, 111/211, 36 S. E. 682.

Killing to prevent; "felony" need not be defined to jury, without request. *Faison*, 13 A. 181, 79 S. E. 39; *Franklin*, 15 A. 350, 83 S. E. 196.

Instruction that if "a man without fault," believes that another is about to commit a felony on him, he "would be justified in acting;" not prejudicial here. *Davis*, 14 A. 764, 766, 82 S. E. 297.

Flight, proof that accused did not attempt, excluded. *Dunn*, 13 A. 682, 79 S. E. 764.

Former conviction of manslaughter, no bar to conviction of murder, on new trial granted on the defendant's motion. *Yeates*, 4 A. 573, 62 S. E. 104.

Forms of verdicts not given in the usual order, in charging jury, defendant not harmed. *Mulligan*, 18 A. 471, 89 S. E. 541.

Fornication, as cause of homicide. *Miller*, 9 A. 599, 71 S. E. 1021.

Error in instruction that the killing must be apparently necessary to prevent the intercourse "then and there." *Miller*, 9 A. 599, 601, 604, 71 S. E. 1021.

Grades of homicide involved in the case must be submitted to jury. *Horton*, 120/307, 47 S. E. 969. Only those so involved. *Owens*, 120/208, 47 S. E. 513. Where evidence raises doubt. *Chapman*, 120/855, 857, 48 S. E. 350; *Cain*, 7 A. 24, 65 S. E. 1069.

Correction of conviction verdict as to grade of, in open court. *Fant*, 8 A. 438, 69 S. E. 586.

Error in instructing jury as to grade not involved, harmless, in view of conviction of different grade. *Smith*, 8 A. 680, 70 S. E. 42.

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Error in charging on higher grades, immaterial where conviction was of lower grade. *Gray*, 12 A. 634, 77 S. E. 916.

Error in refusing to receive verdict for lower grade and in receiving subsequent verdict for higher grade. *Register*, 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142.

Evidence as to grade, consideration of. *Williams*, 120/875, 48 S. E. 368.

Conviction of lesser grade than that charged, when not warranted. *Kendrick*, 113/760, 39 S. E. 286.

Lesser grade, not involved by evidence. *Lanier*, 141/17, 80 S. E. 5.

Gross negligence, or recklessness amounting to wantonness, death caused by. *Central Ry. Co.*, 11 A. 119, 123, 74 S. E. 854.

Habitation, defense of attack on, not raised by evidence. *Waters*, 146/102, 90 S. E. 712; *Lucas*, 146/316, 91 S. E. 72.

Invasion of, no defense of homicide caused by a matter not connected with the invasion; instructions on this defense not authorized in such case. *Love*, 14 A. 49, 80 S. E. 209.

Killing to prevent entry of, by one intending to do violent act therein not amounting to felony, justifiable, when. Facts not requiring instruction on this defense. *Brown*, 8 A. 383, 69 S. E. 45.

Home, homicide in protection of. *Rossi*, 7 A. 732, 738, 68 S. E. 56.

Intent to kill; charge of court not subject to objection that it left the inference that intent, killing, and regret could be simultaneous. *Hart*, 14 A. 364, 80 S. E. 909.

Presumed from weapon used. *Conley*, 21 A. 135, 94 S. E. 261.

Testimony of animus of accused, who set up want of. *Lampkin*, 145/40, 88 S. E. 563.

Presumed, in case of homicide by stabbing in the back with a pocket-

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knife. *Lott*, 18 A. 748, 90 S. E. 727. Facts authorizing conclusion that gun was intentionally pointed at another. *Clonts*, 18 A. 707, 90 S. E. 373.

Intoxicating liquor illegally sold by accused; relevancy of testimony on trial for homicide. *Lucas*, 146/315, 91 S. E. 72.

Intruder, homicide in ejecting from home or place of business; error in charge to jury, unduly limiting defense. *Rossi*, 7 A. 732, 739, 68 S. E. 56.

Invasion of premises by riotous mob. shooting to repel. *Rhodes*, 10 A. 68, 72 S. E. 518.

Involuntary manslaughter, charge on, properly omitted. *Segar*, 12 A. 685, 78 S. E. 51. Proper charge on. *Cobb*, 11 A. 53, 74 S. E. 702.

Joint action, or common purpose in shooting slayer just after homicide. did not appear. *Griggs*, 148/211, 96 S. E. 262.

Necessary instructions to jury on trial of joint defendants. *Driskell*, 20 A. 173, 92 S. E. 1007.

Justifiable homicide, no error in charging on. *Brown*, 17 A. 402, 87 S. E. 155.

In defense of self, or of habitation or property. *Nix*, 120/162, 47 S. E. 516.

In "all other instances which stand upon the same footing of reason and justice," etc. (Penal Code, § 75); difference between common law and this statute. *Gossett*, 123/431, 51 S. E. 394. Meaning of statute, discussed. *Miller*, 9 A. 605, 71 S. E. 1021. Statute inapplicable here. *Herrington*, 125/746, 54 S. E. 748. Statute not applicable where self-defense is relied on. *Ripley*, 7 A. 679, 67 S. E. 834. Relationship or friendship, or even defenselessness of one whose life was in danger, may be considered in determining whether the killing was on like footing of

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reason and justice with homicide in self-defense. *Gillis*, 8 A. 696, 70 S. E. 53.

Killing was, under evidence here (killing with pocket-knife one attacking with fence paling). *Lewis*, 4 A. 219, 60 S. E. 1068.

Kick in stomach, homicide by; proper charge to jury. *Smith*, 12 A. 13, 76 S. E. 647.

Knife, unopened in hand, shooting to repel attack of one advancing with, whether justifiable. *Holton*, 9 A. 418, 71 S. E. 599.

Larceny, shooting to prevent, not justifiable, when. *Beddingfield*, 13 A. 624, 79 S. E. 581.

"Malice," in law of homicide, means intent to take life without legal justification, excuse, or circumstances of mitigation. *Killian*, 19 A. 750, 92 S. E. 227.

Necessary ingredient of, not excluded by language of charge of court. *Killian*, 19 A. 750, 92 S. E. 227.

How manifested; error in charge of court as to. *Mixon*, 15 A. 252, 82 S. E. 936.

Error in charge as to, harmless, where verdict was for manslaughter. *Simpson*, 12 A. 292, 77 S. E. 105; *Williams*, 12 A. 337, 77 S. E. 189.

Charge defining, warranted by evidence. *Cobb*, 11 A. 53, 74 S. E. 702.

Manslaughter, offense is, when the killing is neither justifiable nor malicious: and if intentional, is voluntary manslaughter. *Mixon*, 7 A. 805, 68 S. E. 315.

"Menace," defined. *Spence*, 7 A. 833, 68 S. E. 443.

Placing hand in pocket as if about to draw weapon may be construed as. *Spence*, 7 A. 833, 68 S. E. 443. See *Rossi*, 7 A. 734, 68 S. E. 56.

Misadventure, homicide by, must be free from culpable neglect in order to absolve the slayer. *Allen*, 134/380, 67 S. E. 1038.

Theory not shown by evidence. *Anderson*, 146/193, 91 S. E. 26.

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Misfortune or accident, homicide by; facts not authorizing charge of code section as to. *Knight*, 12 A. 116, 78 S. E. 1047.

Homicide by, in resisting felonious assault with pistol. *Curry*, 148/559, 564, 97 S. E. 529.

Mether, law as to defense of, not confused with self-defense, in charge of court. *Conley*, 21 A. 134, 94 S. E. 261.

Murder, evidence making case of, not manslaughter. *Griggs*, 17 A. 305, 86 S. E. 726.

Error in charge of court as to, immaterial, where the verdict was manslaughter. *Crone*, 22 A. 636, 97 S. E. 83; *Deal*, 18 A. 70, 88 S. E. 902; *Faison*, 13 A. 181, 79 S. E. 39; *Franklin*, 15 A. 349, 83 S. E. 196; *Goss*, 14 A. 402, 81 S. E. 247. *Anderson*, 14 A. 607, 81 S. E. 802; *Land*, 11 A. 761, 76 S. E. 78.

Effect of endorsement of "true bill for voluntary manslaughter" on indictment for. *Williams*, 13 A. 83, 78 S. E. 854.

Failure to charge jury on, not harmful to one convicted of shooting at another. *Espy*, 19 A. 743, 92 S. E. 229.

Omission to give definition of, in charge to jury, on trial for assault to murder, cured by other instructions given. *Caudle*, 7 A. 848, 68 S. E. 343.

See pp. 1178, 1192.

Mutual combat, what constitutes participation in. *Reark*, 105/741, 32 S. E. 125.

Not implied by the word "recounter," in charge of court. *Mulligan*, 18 A. 470, 89 S. E. 541.

Theory of, was involved; homicide by shooting. *Franklin*, 146/40, 90 S. E. 480.

Penal Code, § 73, not apply where no mutual altercation. *Parks*, 105/242, 31 S. E. 580. Proper to give in charge where there is evidence of mutual combat between accused and V. II—15.

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deceased. *Glover*, 105/597, 31 S. E. 584. Penal Code, § 73, not applicable where no mutual combat and no agreement evidencing mutual intention to fight. *Jordan*, 117/405, 43 S. E. 747. Penal Code, § 73, should not be given in charge when there is nothing in the evidence or in the defendant's statement to support the theory of mutual combat. *James*, 123/548, 51 S. E. 577; *Warnack*, 5 A. 816, 63 S. E. 935. When no reversal for giving this section, though doubtful whether mutual combat shown. *Fallon*, 5 A. 662, 63 S. E. 806. Penal Code, § 73. error to give in charge under facts here. *Lowman*, 109/501, 34 S. E. 1019; *Delegal*, 109/518, 35 S. E. 105.

Mutual protection by parents and children. *McDonald*, 23 A. 125, 97 S. E. 556.

Necessity for killing; charge of court as to, considered. *Fant*, 8 A. 439, 440, 69 S. E. 586. Fear of felony, not sufficient to justify; slayer must believe it necessary to kill, etc. *Ib.*

Charge of court not subject to objection that it required defendant to show an actual necessity, before he could claim benefit of the doctrine as to apparent necessity. *Esa*, 19 A. 14, 90 S. E. 732.

Defense not limited by charge to actual, instead of apparent necessity. *Early*, 14 A. 467, 81 S. E. 385.

Distinction between law in Penal Code, §§ 70, 71, and § 73, as to. *Nunn*, 14 A. 697, 698, 82 S. E. 56.

Proper instruction as to apparent necessity for killing. *Dunn*, 16 A. 10, 84 S. E. 488.

Real or apparent necessity for killing, and justification for excitement of passion, questions for jury. *Johnson*, 12 A. 493, 77 S. E. 587.

Negligent homicide by shooting. *Allen*, 134/380, 67 S. E. 1038. Negligent or or unskillful treatment of wound, not

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relieve accused of responsibility for homicide. *Downing*, 114/30, 39 S. E. 927.

Newly discovered evidence requiring new trial for homicide. *Holton*, 9 A. 414, 71 S. E. 599.

Non-action (not supplying medical attention, etc.), homicide as result of. *Glawson*, 9 A. 458, 71 S. E. 747.

Officer attempting arrest, homicide by. *Cooner*, 16 A. 539, 85 S. E. 688.

Opinion of physician that death would soon follow wound, admissibility of. *Langston*, 10 A. 84, 72 S. E. 532.

Opprobrious words, cause of killing, verdict of murder demanded. *Spence*, 7 A. 825, 68 S. E. 443.

Homicide not justified by. *Empire L. Ins. Co.*, 12 A. 380, 77 S. E. 209.

"Other equivalent circumstances," sufficient to reduce homicide to manslaughter (P. C. § 65); error in instruction that they do not include words, threats, or menaces. *Dunn*, 16 A. 9, 84 S. E. 488.

What are. *Findley*, 125/579, 54 S. E. 106.

Definition of; judge may give definition to jury, but need not do so when not requested. *Thurman*, 14 A. 543, 81 S. E. 796.

Participation in slayer's attack, but with intent to participate in assault and battery only; instruction as to effect of. *Hegwood*, 12 A. 566, 77 S. E. 886.

Personal injury less than felony, homicide to prevent, not justifiable. *Battle*, 103/59, 29 S. E. 491.

Pistol, possession of, as circumstance. *Garner*, 6 A. 789, 5 S. E. 842.

Police officer, homicide of, upon arrest of accused; defense of justification on reasonable fears. *Graham*, 143/441, 85 S. E. 328, Ann. Cas. 1917 A. 595.

Presumption from proof of homicide; and burden of proof of justification or mitigation. *Beach*, 138/266, 75

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S. E. 139; *Durham*, 138/817, 76 S. E. 351.

That homicide is felonious, until circumstances of justification or of mitigation appear. *Boyd*, 136/341, 71 S. E. 416.

From use of deadly weapon. *Trav. Ins. Co.*, 107/584, 34 S. E. 113; *Posey*, 22 A. 97, 95 S. E. 325; *Harrell*, 22 A. 104, 95 S. E. 537.

Of malice; instruction that "where the State clearly establishes the killing as charged,—that is . . . that the defendant did the killing,—the law presumes malice," was not error. *Mulligan*, 18 A. 465, 469, 89 S. E. 541.

Of malice, unless circumstances of excuse, justification, or mitigation appear. *Turner*, 139/593, 77 S. E. 828.

Of malice, on proof of homicide; proper charge to jury as to. *Griggs*, 17 A. 302, 86 S. E. 726.

Previous difficulty, character of deceased and habit to carry weapon, admissibility of evidence as to. *Daniel*, 103/202, 29 S. E. 767.

Proper instruction to jury as to. *Spurgeon*, 8 A. 117, 68 S. E. 653.

Prima facie case of murder made out by proof of killing in manner alleged in indictment; no error in charge to jury as to this. *Rickerson*, 10 A. 464, 73 S. E. 681.

Principals in first and second degrees. proper instructions as to. *Maughon*, 9 A. 566, 71 S. E. 922. Principal in second degree convicted after acquittal of principal in first degree. *Maughon*, 9 A. 559, 71 S. E. 922. Whether one indicted as principal in first degree, may be convicted as principal in second degree. *Maughon*, 9 A. 567, 71 S. E. 922.

Proof of homicide by circumstantial evidence, where body is not found. *Ray*, 4 A. 70, 60 S. E. 816.

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Of uncommunicated threats; opprobrious words as justification for assault. *McKinney*, 119/467, 46 S. E. 719.

Provocation at previous time. *Perry*, 117/719, 45 S. E. 77.

Insufficient for homicide. *Goodman*, 122/111, 49 S. E. 922.

By one pointing pistol which he was prevented from using. *Barrett*, 14 A. 807, 82 S. E. 371. Passion aroused by assault at previous time, basis for conviction of manslaughter. *Ib.*

Meaning of, in code section as to provocation by words, threats, etc. *Manson*, 14 A. 838, 82 S. E. 763.

Charge of court was susceptible of misconstruction. *Ib.*

By threats, etc., in no case sufficient to free from guilt of murder; when error to charge jury in language of code to this effect; charge not misleading here. *Brown*, 8 A. 383, 69 S. E. 45.

By words, threats, menaces, or contemptuous gestures; proper instructions to jury as to. *Griggs*, 17 A. 302, 86 S. E. 726.

By words, threats, menaces, etc.; charge of court as to, considered. *Worley*, 21 A. 787, 95 S. E. 304.

When not proper to charge as to. *Garner*, 6 A. 789, 65 S. E. 842. Error in charging jury on. *Jones*, 7 A. 334, 66 S. E. 961; *Rossi*, 7 A. 732, 68 S. E. 56. When not error. *Mixon*, 7 A. 810, 68 S. E. 315; *Carswell*, 10 A. 30, 72 S. E. 514. Error in charging jury in language of code as to. *Dunn*, 13 A. 682, 79 S. E. 764.

Error in charging in language of code section as to such provocation, without qualification as to sufficiency of threats, etc., to cause reasonable fear. *Phillips*, 11 A. 262, 75 S. E. 14. Error in charging language of code (§ 65) as to, without proper qualification. *Dunn*, 16 A. 9, 84 S. E. 488; *Dixon*, 12 A. 18, 76 S. E. 794; *Brown*, 12 A. 722, 78 S. E. 352. Such charge harmless, in

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absence of facts to which such qualification might apply. *Jordan*, 16 A. 393, 85 S. E. 455. Omission of this part of § 65 in charging, no ground for new trial; usually safer to omit it, as it may be misunderstood, without qualification. *Booker*, 16 A. 285, 85 S. E. 255. See *Cason*, 23 A. 540, 99 S. E. 61.

Reading code definitions of voluntary and involuntary manslaughter, in charge to jury, not error here. *Smith*, 12 A. 14, 76 S. E. 647.

Reasonable fears, as defense. *Garner*, 6 A. 789, 65 S. E. 842; *Battle*, 103/58, 29 S. E. 491; *Daniel*, 103/202, 29 S. E. 767.

Admissibility of evidence of previous assault and threat. *Baker*, 142/619, 83 S. E. 531.

Aroused by words, threats, or menaces, justification on. *Deal*, 145/33, 88 S. E. 573.

Charge that bare fear would not justify, not error, when. *Campbell*, 125/752, 54 S. E. 666.

Charge that they should be the fears of a brave man, not approved, but no cause for reversal, where accused was one of posse of arresting officer. *Dover*, 109/485, 34 S. E. 1030.

Defense that slayer acted under, was not restricted by charge of court to a case of real, instead of apparent, necessity. *Batchelor*, 16 A. 756, 90 S. E. 487.

Error in charge as to. *Williams*, 107/727, 33 S. E. 648.

Evidence illustrative of reasonableness of fears. *Dunn*, 16 A. 9, 84 S. E. 488.

Instruction on, was not subject to the exception that it restricted accused to that defense. *Swilling*, 18 A. 619, 90 S. E. 78.

Instructions to jury not appropriate to this defense. *Dunn*, 16 A. 9, 84 S. E. 488.

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Instruction erroneous which could be construed as limiting this defense to fear that life was in danger. *Bates*, 4 A. 486, 61 S. E. 888.

Instruction not construed as limiting this defense to fear that life was in danger. *Edwards*, 7 A. 625-6, 67 S. E. 701. Reasonable doubt as to whether defendant acted under reasonable fears, etc.; request to charge as to, discussed. *Mixon*, 7 A. 808, 68 S. E. 315.

Means fears of a reasonably courageous man. *Cochran*, 9 A. 824, 72 S. E. 281. Error in charge using expression "reasonable courageous," instead of "reasonably courageous," not misleading here. *Griffin*, 18 A. 463, 89 S. E. 537; *Lott*, 18 A. 748, 90 S. E. 727. Justification on reasonable fear of courageous and self-possessed man, not a coward. *Williams*, 145/177, 88 S. E. 958.

No error in refusing to charge that "words, threats, and menaces may of themselves excite the fears of a reasonable man and justify," etc. *Mason*, 18 A. 224, 89 S. E. 185.

Not excluded by instruction. *Early*, 14 A. 467, 81 S. E. 385.

Of felony. *Williams*, 120/870, 48 S. E. 368.

Omission to charge as to, in charge on manslaughter, not error, in view of instructions elsewhere. *Williams*, 125/265, 54 S. E. 167.

One convicted of manslaughter not hurt by court giving in charge code section on this subject. *Carswell*, 10 A. 27, 72 S. E. 514.

Proper charge to jury. *Simpson*, 12 A. 292, 77 S. E. 105.

Reversal for refusing request to charge on, applying law to facts, though based on statement of accused, and though the law was charged abstractly. *Stribling*, 6 A. 864, 65 S. E. 1068.

What are, is a jury question, when. *Cain*, 7 A. 25, 65 S. E. 1069; *Rossi*, 7 A. 733, 734, 68 S. E. 56.

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Where deceased was approaching at night with a stick and did not stop when told to do so. *Ragland*, 111/215, 36 S. E. 682.

Where deceased attempted to draw weapon. *Cain*, 7 A. 25, 65 S. E. 1069.

Whether court should charge as to fears of a "reasonable woman," instead of a "reasonable man," where the accused is a woman. *Hightower*, 14 A. 250, 80 S. E. 684.

Reckless or negligent use of weapon, from which homicide results. *Felder*, 135/220, 69 S. E. 106; *Delk*, 135/315, 69 S. E. 541, 22 L. R. A. (N. S.) 105.

Relative size and strength of the parties, and violent character of one; no error in not charging jury as to, without request. *Langston*, 10 A. 85, 72 S. E. 532.

Res gestae of homicide. *Weldon*, 21 A. 332, 94 S. E. 326; *Dunn*, 16 A. 9, 84 S. E. 488.

Slayer's statement, after walking from place of killing to opposite side of street, that he "had to do it," no part of. *Carswell*, 10 A. 30, 72 S. E. 514.

Bystander's sayings during affray, admitted as part of. *Hill*, 17 A. 294, 86 S. E. 657.

Conduct of participants, including declarations. *Price*, 137/71, 72 S. E. 908.

Right to be where he was, as affecting right to kill without having retreated. *Glover*, 105/597, 31 S. E. 584.

Riotous conduct and attempt to invade home, to assault one therein, killing therefor, when justifiable. *Smith*, 106/673, 32 S. E. 851, 71 Am. St. R. 286.

Robbery by intimidation, as defense of homicide of one of several persons stealing melons. *Jordan*, 135/434, 69 S. E. 562.

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Self-defense, no issue as to, made by evidence, no error in not charging jury on. *Stevens*, 8 A. 218, 68 S. E. 874.

Charge to jury on law of, harmless though not pertinent. *Gaskins*, 12 A. 100, 76 S. E. 777.

By one who brought about the difficulty, charge of court as to, considered. *Mathews*, 125/50, 54 S. E. 196.

Right of, not forfeited by having provoked the difficulty, when. *Reddick*, 11 A. 150, 74 S. E. 901.

Instructions limiting theory of, to defendant's contention that the deceased was the aggressor, not error here. *Mulligan*, 18 A. 465, 89 S. E. 541.

Homicide in, by one who was the original assailant, justifiable when. *Coleman*, 121/599, 49 S. E. 716.

Homicide in, provocation no element of. *Vernon*, 146/714, 92 S. E. 76.

Right of, where party abandoning intent to fight is attacked. *Bundrick*, 125/757, 54 S. E. 683.

"Serious injury," meaning of, in Penal Code, § 72, as to homicide to prevent such injury; error to charge that it means a felony. *Bennett*, 19 A. 445, 91 S. E. 889.

Shooting opposite party in quarrel, while he was approaching with hand in pocket; conviction of manslaughter affirmed. *Young*, 10 A. 116, 72 S. E. 935.

Sister, charges made against, not justify shooting, or reduce homicide to manslaughter. *Renfro*, 8 A. 676, 70 S. E. 70.

Use of words "self-defense," in charging that the accused would be justified if he shot "in self-defense, to protect the person of his sister," not material error. *Winder*, 18 A. 67, 88 S. E. 1003.

Slayer cannot take advantage of emergency he creates for adversary to de-

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fend self. *Price*, 137/71, 72 S. E. 908.

Statement of accused, theory of defense presented only by, court not required to charge jury on, when not requested. *Darby*, 16 A. 171, 84 S. E. 724.

Sole defense, defendant's statement that he acted in self-defense; sufficient instructions to jury. *Thorn-ton*, 18 A. 745, 90 S. E. 489.

Stick, killing with; conviction of voluntary manslaughter upheld. *Fant*, 8 A. 438, 69 S. E. 586.

Striking with hand not justify homicide. *Empire L. Ins. Co.*, 12 A. 380, 77 S. E. 209.

Testimony that the described location of the fatal wound indicated the position of the deceased when shot, admitted; not material error. *Rivers*, 10 A. 487, 73 S. E. 610.

Irrelevant, as to gun picked up at place of homicide; new trial not required by error in admitting. *Folsom*, 14 A. 245, 80 S. E. 677.

That the accused was in good humor shortly before the homicide, rejection of, not prejudicial here. *Chewning*, 18 A. 11, 88 S. E. 904.

Third person not in concert with deceased, effect of fact that slayer, soon after homicide, was himself shot by. *Griggs*, 148/211, 96 S. E. 262.

Threats, menaces, etc.; error in charge of court excluding them as defense notwithstanding the jury might find that the homicide resulted from fear caused by them. *Landrum*, 9 A. 115, 70 S. E. 353.

Insufficient to constitute legal provocation of passion and reduce offense to manslaughter, may be ground for reasonable fears justifying homicide. *Phillips*, 11 A. 262, 75 S. E. 14; *Rossi*, 7 A. 732, 68 S. E. 56; *Dixon*, 12 A. 18, 76 S. E. 794; *Brown*, 12 A. 722, 78 S. E. 352.

Sufficient to create apparent danger justifying homicide, not sufficient

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provocation to reduce it to manslaughter, when no assault. *Brantley*, 5 A. 458, 63 S. E. 519.

When sufficient to arouse reasonable fear and justify homicide; facts not making case of such fear. *Fallon*, 5 A. 659, 63 S. E. 806.

Of lynching, etc., as ground for change of venue. *Marshall*, 20 A. 416, 93 S. E. 98.

Proper instruction as to, as bearing on reasonableness of fears. *Alexander*, 8 A. 531, 69 S. E. 917.

Uncommunicated, admissibility of. *Cargill*, 12 A. 574, 77 S. E. 832.

Not communicated, inadmissible testimony as to. *Ellison*, 21 A. 259, 261, 94 S. E. 253.

Throwing brick or rock, homicide by; issue of fact as to intent of accused; no legal presumption. *Hunter*, 147/823, 95 S. E. 668.

Trespass on property, homicide to prevent. *Bennett*, 19 A. 445, 91 S. E. 889.

Trespasser, right to defend against, without retreating; instruction to jury. *Fant*, 8 A. 440, 69 S. E. 586.

When not justifiable to kill, nor voluntary manslaughter. *Parks*, 105/248, 31 S. E. 580.

Two defenses relied on,—denial of killing and justifiable homicide; error to charge jury that defendant "contends that he killed deceased, acting under fears of a reasonable man." *Green*, 7 A. 803, 68 S. E. 318.

Unskilful treatment of wounded person, not remove responsibility for homicide. *Allen*, 133/260, 65 S. E. 431; *Clements*, 141/667, 81 S. E. 1117.

"Unwritten law" as to homicide, condemned. *Miller*, 9 A. 601, 71 S. E. 1021.

Verdict for lower grade than charged acquits of higher grades, and is a finality, where the accused does not object to it. Judge can not refuse to receive it, though not supported by evidence. Subsequent verdict

Homicide—(Continued.)

for higher grade set aside. *Register*, 10 A. 623, 74 S. E. 429.

Validity of, not tested by charge of court, on motion to arrest judgment. *Spence*, 7 A. 825, 68 S. E. 443.

May be for any grade shown by evidence, though not mentioned in charge of court. *Spence*, 7 A. 825, 68 S. E. 443.

Of manslaughter, where justification not shown by evidence or defendant's statement, and verdict of murder was demanded, did not entitle him to complain. *Spence*, 7 A. 825, 68 S. E. 443.

Weapon or instrument shown by proof, not same as that alleged; not fatal variance, when; cases collected. *Watson*, 21 A. 637, 94 S. E. 857.

Variance between allegation and proof as to, not sufficient to prevent conviction. *Burney*, 22 A. 622, 97 S. E. 85.

Whisky taken from the accused shortly after the homicide, no error in admitting in evidence, when. *Chewing*, 18 A. 11, 88 S. E. 904.

Evidence that whisky was found at the house of the person killed, excluded. *Miller*, 18 A. 487, 89 S. E. 607.

Wife, and paramour in act of adultery, homicide of; proper instructions to jury as to. *August*, 20 A. 168, 92 S. E. 956.

Of slayer, homicide on account of illicit relations of the deceased with. *Land*, 11 A. 761, 76 S. E. 78. Indecent proposals to, cause of killing; doctrine of *Biggs* case, 29 Ga. 732, discussed. *Rossi*, 7 A. 732, 68 S. E. 56.

Illicit relations between defendant's wife and the deceased, relevancy of. *Morgan*, 16 A. 267, 85 S. E. 255.

Adultery with slayer's wife, as defense. *Jordan*, 16 A. 393, 399, 85 S. E. 455.

Homicide—(Continued.)

Homicide by husband on finding his wife in sexual intercourse with the deceased, justifiable. *Branch*, 5 A. 652, 63 S. E. 714.

Of deceased, immoral relations of, with another, not relevant on her trial for homicide. *Hightower*, 14 A. 247, 80 S. E. 684.

See catchwords, *Intent*, *Justifiable homicide*, *Manslaughter*, *Murder*, *Mutual combat*, *Weapon*.

Horse-stealing; evidence exceedingly weak and unsatisfactory, but verdict not set aside. *McWhorter*, 9 A. 437, 71 S. E. 589.

Horse used without consent of owner; conviction set aside, where, before prosecution, the owner sold him to defendant, thus ratifying the use. *Holsey*, 4 A. 453, 61 S. E. 836; *Sanders*, 4 A. 850, 62 S. E. 567.

Hotel keeper. Obtaining food, etc., from, with intent to defraud; act of 1910 as to, constitutional. *Smith*, 14 A. 427, 81 S. E. 361.

"House," in code provisions as to larceny from, includes chicken-house. *Gardner*, 105/662, 31 S. E. 577; *Williams*, 105/814, 32 S. E. 129, 70 Am. St. R. 82.

Hunting or fishing on another's land without his consent, violation of game law. *Robinson*, 12 A. 683, 78 S. E. 53.

Idleness. See catchword *"Vagrancy,"* *infra*.

Impounding animal, when not legal. *Lowry*, 6 A. 542, 65 S. E. 353. Breaking pound, erroneous instructions to jury as to defense set up on trial for. *Id.*

Incest; evidence warranting conviction. *Brown*, 18 A. 30, 88 S. E. 710.

On trial for, witness may negative sexual intercourse with other than accused. *Taylor*, 110/151, 35 S. E. 161.

No conviction of, upon the uncorroborated testimony of the woman. *Yother*, 120/204, 47 S. E. 555. Corroboration held insufficient. *Durden*, 120/860, 48 S. E. 315.

Testimony of prior acts of criminal intimacy admissible for what purpose. *Taylor*, 110/151, 35 S. E. 161.

Sexual intercourse with stepdaughter is. *Taylor*, 110/150, 35 S. E. 161; *Nephew*, 5 A. 841, 63 S. E. 930.

With stepdaughter, wife's illegitimate daughter; evidence sufficient to convict. *Lipham*, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

With stepdaughter; conviction not warranted by evidence. *Jennings*, 13 A. 678, 79 S. E. 756. Uncorroborated testimony of accomplice, not sufficient. *Id.*

Woman consenting, an accomplice, though some coercion used; testimony as to whippings not connected by evidence with the offense, irrelevant. *Whidby*, 121/588, 49 S. E. 811.

"Indecency," meaning discussed; public indecency committed by man causing bull and cow to copulate near highway, in view of woman and children. *Redd*, 7 A. 575, 67 S. E. 709.

Indecent conduct, province of jury to say what is. *Haines*, 8 A. 627, 70 S. E. 84.

Indecent exposure of person, must be where more than one can see it, to warrant conviction of "a notorious act of public indecency." *Morris*, 109/351, 34 S. E. 577.

"Indecently acting," meaning of, in Penal Code, § 412; discharging pistol near congregation assembled for worship was. *Folds*, 123/167, 170, 51 S. E. 305.

When talking outside church is not. *Taylor*, 1 A. 539, 57 S. E. 1049.

Indecent proposals to wife, cause of homicide. *Rossi*, 7 A. 732, 68 S. E. 56.

Infanticide; conviction supported. *Anderson*, 146/193, 91 S. E. 26.

Infant or idiot, guilt of one receiving fruits of crime from, or counseling or procuring to commit crime. *Rice*, 118/48, 44 S. E. 805, 98 Am. St. R. 99.

Insurance, solicitation of, for unlicensed insurer, criminal. *Jalomick*, 7 A. 311, 66 S. E. 815.

Intent, common, and joint action of at least two persons, necessary to consti-

tute riot. **Dixon**, 105/787, 31 S. E. 750.

Criminal, not shown, conviction of trespass set aside. **Harvey**, 6 A. 242, 64 S. E. 669.

May be inferred from actual homicide with deadly weapon used in ordinary way; must be proved where no homicide occurs. **Futch**, 137/75, 72 S. E. 911.

Not gist of offense, in extortion. **Levar**, 103/49, 29 S. E. 467. Criminal intent not shown, conviction of extortion set aside. **Holt**, 11 A. 34, 74 S. E. 560.

To kill A made the killing of B murder. **Chelsey**, 121/340, 49 S. E. 258.

To kill, and assault with impotent weapon believed by accused to be deadly, makes no case of assault with intent to murder. **Mathews**, 104/497, 30 S. E. 727; **Meriwether**, 104/500, 30 S. E. 806.

To kill, inferred by law, where death results from shooting with deadly weapon. **Scott**, 132/357, 64 S. E. 272.

To kill, inferred from killing resulting from malicious assault with deadly weapon. Not inferred where death does not result. **Lanier**, 106/368, 32 S. E. 335; **Stovall**, 106/447, 32 S. E. 586; **Gaskins**, 11 A. 11, 13, 74 S. E. 554, 555.

To kill, instructions as to, which should have been given on trial of assault to murder. **Jackson**, 103/417, 30 S. E. 251.

To kill, issue as to. **Harris**, 136/107, 70 S. E. 952.

To kill, not conclusively shown by a blow from stick of wood hastily seized, from which death resulted. **Taylor**, 108/384, 34 S. E. 2.

To kill, not presumed (in law) from hurling thick beer-bottle. **Farmer**, 112/80, 37 S. E. 120.

To kill, presumed from stabbing in neck with pocket-knife; harmless error not to charge that evidence must show intent. **Johnson**, 4 A. 59, 60 S. E. 801.

To kill, shown by declaration of accused just before homicide. **Hill**, 148/521, 97 S. E. 442.

When presumed from use of weapon. **McLeod**, 128/17, 57 S. E. 83.

To kill, shown by use of deadly weapon in a manner likely to cause death. **Nelson**, 4 A. 223, 60 S. E. 1072; **Delk**, 135/313, 69 S. E. 541, 22 Ann. Cas. 105.

To steal, evidence as to, very weak, but verdict not disturbed. **Johnson**, 9 A. 409, 71 S. E. 507.

To steal, formed after possession obtained, not render conversion larceny, when. **Abrams**, 121/171, 48 S. E. 965.

When necessary to allege and prove, and when not. **Chelsey**, 121/340, 49 S. E. 258; **Shrouder**, 121/615, 49 S. E. 702.

When "wilful." **Kendall**, 9 A. 794, 72 S. E. 164.

Whether wilful and malicious, for jury. **Sanders**, 118/329, 45 S. E. 365; **Middlebrooks**, 118/773, 45 S. E. 607.

See catchword, **Weapon**.

Interest above five per cent. per month, taking of. **King**, 136/709, 71 S. E. 1093.

Interference with employees, by strikers. **Robbins**, 119/570, 46 S. E. 834.

Intoxicating liquors.

Act of 1915, as to keeping for sale, supersedes municipal ordinance. **Mayo**, 146/650, 92 S. E. 59; **Barlow**, 146/805, 92 S. E. 643.

Possession of but a single kind allowed by. **Kraken**, 147/198 (dis-sent, 200), 93 S. E. 198.

Carriage and possession of liquor in violation of. **Hendry**, 147/260, 93 S. E. 413.

Agency in liquor-selling. **Williams**, 107/696, 33 S. E. 641; **Billups**, 107/766, 33 S. E. 659; **Cunningham**, 105/676, 31 S. E. 585. Allegation of sale to one named, not supported by proof of sale to him as agent with notice that he was buying for his principal. **Barlow**, 127/58, 56 S. E. 131.

Intoxicating liquors—(Continued).

For buyer, relevancy of testimony offered to show. *Silver*, 105/838, 32 S. E. 22.

For purchaser not shown. *Hall*, 125/31, 53 S. E. 807.

Of accused for buyer, evidence showing, and disclosing name of seller, conviction not warranted. *Shaw*, 3 A. 607, 60 S. E. 326.

Consent of employer, to sale by employee, though forbidding it, shown by circumstances. *Groves*, 8 A. 690, 70 S. E. 93.

Agreement to cancel unlawful sale will not acquit. *Lupo*, 118/759, 45 S. E. 602.

Another State, liquor sale effected in Georgia by person in, through agents. *Cureton*, 136/91, 70 S. E. 786.

Beer, conviction not sustained by proof that the liquor sold was, where the kind of beer or its effect was not shown. *DuVall*, 115/813, 42 S. E. 265.

Beverage not necessarily intoxicating. *Maddox*, 118/69, 44 S. E. 822.

Bottles of less than one quart, liquor possessed in, presumed held for illegal sale. *Gallagher*, 146/807, 92 S. E. 628.

Buying whisky for another with his money is not liquor-selling. *Evans*, 101/780, 29 S. E. 40.

Carrier, liquor-selling by. Whisky shipped from other State, and held by agent of express company until delivery to consignee on his paying the price. *Southern Express Co.*, 114/226, 39 S. E. 899.

Delivery of liquor by, when not criminal. *Southern Express Co.*, 107/670, 33 S. E. 637, 46 L. R. A. 417, 73 Am. St. R. 146.

Carrying liquor on person for purpose of unlawful sale, valid city ordinance against. *Allen*, 134/338, 67 S. E. 883.

Charge of court, that evidence showed illegal sale, warranted. *Springfield*, 125/281, 54 S. E. 172.

Intoxicating liquors—(Continued).

Erroneous, as to illegal sale, and conviction unsupported. *Fleming*, 106/359, 32 S. E. 338.

Church, carrying liquor to; law violated by keeping in buggy near church, though for sick wife. *Bice*, 109/117, 34 S. E. 202.

Liquor sale in three miles of, conviction of, in place where sale prohibited by local law. *Blake*, 118/333, 45 S. E. 249.

Clerk, liquor sale by; conviction of employer failing to show that the sale was unauthorized by him. *Rooney*, 117/709, 45 S. E. 72.

Club, when furnishing to member of, liquor belonging to club, treated as selling. *Mohrman*, 105/715, 32 S. E. 143, 43 L. R. A. 398, 70 Am. St. R. 74.

Concealing or attempting to conceal liquor, for illegal sale, covered by State law. *Snipe*, 147/285, 93 S. E. 399.

County, change of limits of, by creation of new county, as affecting operation of local law against sale of liquor. *Parker*, 126/443, 55 S. E. 329.

Sale of liquor, where consummated, when shipped to another county. *Hopson*, 116/90, 42 S. E. 412.

Credit, liquor-selling on, in violation of law, though buyer fail to pay. *Cook*, 124/653, 58 S. E. 104; *Lupo*, 118/759, 45 S. E. 602; *Finch*, 6 A. 338, 64 S. E. 1007.

Dealer shipping liquor to unknown customer acts at his peril; ignorance no excuse. *Newsome*, 1 A. 790, 58 S. E. 71.

Definition of intoxicating liquors; what medicinal, toilet, and culinary preparations not included; bitters, cordials and tonics, when included. *Mason*, 1 A. 534, 58 S. E. 139.

Delivering whisky and receiving money for it renders one guilty of selling liquor, when no other person is shown to have sold it. *Burden*, 120/198, 47 S. E. 562; *Reese*, 120/198,

Intoxicating liquors—(Continued).

47 S. E. 560. See *Erwin*, 120/150, 47 S. E. 512.

Device to evade law against liquor selling, whether sale of non-intoxicants and simultaneous gift of whisky constituted, was a question for the jury. *Turner*, 121/154, 48 S. E. 906.

Conviction authorized if jury believe scheme was a cover for illegal sale. *Meadows*, 127/283, 56 S. E. 404.

Schemes to cover indirect sale of liquor. *Holt*, 7 A. 77, 66 S. E. 279; *Stradley*, 7 A. 442, 67 S. E. 107.

Different transactions; proof of, on trial for selling liquor; proper instructions to jury as to. *Taylor*, 5 A. 237, 62 S. E. 1048.

Domestic wines not put on "free list" by act of 1877, nor authorized to be sold by other than manufacturer. *Hancock*, 114/439, 40 S. E. 317.

Accusation here was intended to charge violation of Penal Code of 1895, § 450; "whisky" treated as surplusage; conviction not upheld by proof of sale of corn whisky. *Barker*, 117/429, 43 S. E. 744.

Drunk or intoxicated person, sale of liquor to; charge of court and conviction upheld. *Sapp*, 116/184, 42 S. E. 410; *Rollestone*, 3 A. 161, 59 S. E. 442.

Election day, law as to selling or furnishing liquor on, includes special election for justice of the peace. *Long*, 127/285, 56 S. E. 421. Applies to election for constable. *Rose*, 107/697, 33 S. E. 439.

"Day" is from midnight to midnight. *Rose*, 107/697, 33 S. E. 439.

Offering liquor on, by one not owning it, punishable, though offer declined. *Brownlow*, 112/406, 37 S. E. 733.

Evidence, admissibility of, on trial for liquor-selling. *Bonner*, 2 A. 711, 58 S. E. 1123.

That house of accused was searched on day next after that alleged, and that bottles of whisky were

Intoxicating liquors—(Continued).

found, admissible. *Cole*, 120/485, 48 S. E. 156.

Warranting conviction of liquor-selling. *Billups*, 107/766, 33 S. E. 659; *Thompson*, 109/272, 34 S. E. 579; *Daniels*, 118/18, 44 S. E. 818; *McCollum*, 119/308, 46 S. E. 413, 100 Am. St. R. 176; *Grantham*, 120/160, 47 S. E. 518; *Finch*, 120/174, 47 S. E. 504; *Hall*, 122/142, 50 S. E. 59; *Teasley*, 124/794, 53 S. E. 102; *Robinson*, 125/31, 53 S. E. 766; *Bass*, 1 A. 728, 57 S. E. 1054; *Smith*, 3 A. 326, 59 S. E. 934; *Donaldson*, 3 A. 451, 60 S. E. 115.

Sufficient to convict of liquor-selling ("white hops"). *Eaves*, 113/749, 39 S. E. 318.

Not warranting conviction for selling. *Bonner*, 2 A. 711, 58 S. E. 1123; *Fleming*, 106/359, 32 S. E. 338.

Not warranting conviction of sale or soliciting orders for liquor. *Williams*, 107/694, 33 S. E. 641.

Homicide, relevancy on trial for, of testimony that accused illegally sold liquor. *Lucas*, 146/315, 91 S. E. 72.

Imitations, near beer and soft drinks, municipal powers as to. *Cassidy*, 133/689, 66 S. E. 941; *Loeb*, 133/796, 67 S. E. 101, 18 Ann. Cas. 376. State taxation of. *Carswell*, 133/714, 66 S. E. 905.

Impure or drugged liquor, no inquiry as to, where accused pleads that he was drunk when crime committed. *Cribb*, 118/316, 45 S. E. 396.

Indictment charging sale of several liquors, conviction on proof of sale of one of them. *Kemp*, 120/158, 47 S. E. 548.

Charging sale of "spirituous, vinous and malt liquors," supported by proof of sale of one of the three kinds. *Eaves*, 113/750, 39 S. E. 318.

For unlawful possession of liquor, and evidence, sufficient. *English*, 147/515, 94 S. E. 884.

Allegation in, under law prohibiting sale in county, that the accused

Intoxicating liquors—(Continued).

is not within an exception as to certain towns, is surplusage, and need not be proved. *Tigner*, 119/114, 45 S. E. 1001.

Injunction against prosecutions for sale of liquor in violation of city ordinances, not granted, when. *Mayor etc. of Shellman*, 134/30, 67 S. E. 438, 27 L. R. A. (N. S.) 452.

Interstate commerce as affecting power of state as to intoxicating liquors. *Rose*, 133/356, 65 S. E. 770, 36 L. R. A. (N. S.) 443.

Validity of law prohibiting solicitation of orders for liquor, as applied to agent of non-resident dealer engaged in. *Kirkpatrick*, 138/794, 76 S. E. 53.

Prohibitory law as to liquor, when not invalid as affecting. *Cureton*, 136/91, 70 S. E. 786.

Intoxicating character of liquor, when need not be proved. *Edwards*, 124/100, 52 S. E. 319. Proof that liquor sold was intoxicating, not necessary where indictment was under a law making penal the unlicensed sale of malt liquors; but it could be considered in determining whether it was malt liquor. *Eaves*, 113/750, 39 S. E. 318.

When inferred. Evidence sufficient as to sale of whisky. *Tompkins*, 2 A. 640, 58 S. E. 1111.

When question for court and when for jury. *Bradley*, 121/205, 48 S. E. 981.

Jeopardy from charge of sale of liquor, without specifying person or occasion. *Craig*, 108/776, 33 S. E. 653.

Judicial cognizance not taken that all malt liquors are intoxicating. *Eaves*, 113/750, 39 S. E. 318.

Taken that corn whisky is intoxicating. *Fears*, 125/740, 54 S. E. 661.

That fermented wine is intoxicating, when a misleading charge to jury. *Hall*, 122/142, 50 S. E. 59.

Keeping for sale intoxicating liquors. *Greer*, 127/47, 56 S. E. 73.

Intoxicating liquors—(Continued).

Inferred from single sale, when. *Greer*, 17 A. 753, 88 S. E. 408.

May be shown by proof of a sale. *Erwin*, 120/150, 47 S. E. 512; *Reese*, 120/198, 47 S. E. 560. Evidence here failed to show. *Ib.* 150.

Evidence warranting conviction for. *Watts*, 123/507, 51 S. E. 508; *Tucker*, 122/160, 50 S. E. 61.

Conviction of, on evidence as to sale by another. *Rooney*, 117/709, 45 S. E. 72.

Violation of city ordinance as to, by one licensed to sell, in making sale at time not authorized by the license. *Rooney*, 117/709, 45 S. E. 72.

City ordinance against, and punishment. *Papworth*, 106/378, 32 S. E. 363.

Authority of municipality to make penal. *Hood*, 113/192, 38 S. E. 409; *Robinson*, 121/180, 48 S. E. 924; *Rooney*, 117/709, 45 S. E. 72; *Chester*, 135/423, 69 S. E. 549; *Tucker*, 122/160, 50 S. E. 61.

Municipal ordinance prohibiting, not unconstitutional as in conflict with domestic-wine law. *Osburn*, 118/53, 44 S. E. 807.

Authority of city to make penal, under general welfare clause of charter. *Cunningham*, 107/690, 33 S. E. 664.

Knowledge of contents of package containing liquor, not shown, conviction of carrier set aside. *Southern Express Co.*, 6 A. 31, 64 S. E. 341.

Of presence of liquor on premises, by one charged with keeping it on hand, sufficiency of evidence. *Lewis*, 6 A. 205, 64 S. E. 701.

Lager beer may be treated as intoxicating, in absence of proof as to whether it is; but under evidence here it was error to instruct that all lager beer is intoxicating. *Smith*, 113/758, 39 S. E. 294.

"Lager soda" as intoxicating liquor. *Maddox*, 118/71, 44 S. E. 822.

Larceny, liquor may be of value and the subject of, though its sale is pro-

Intoxicating liquors—(Continued).

hibited by law. *Mance*, 5 A. 229, 62 S. E. 1053.

Legislation as to sale is invalidated by failure to except domestic wines, or by character of exception made, when, and when not. *Duren*, 126/497, 54 S. E. 1045; *Glover*, 126/606, 608, 55 S. E. 592.

Legislature may authorize city to punish for selling liquor, when. *Littlejohn*, 123/427, 51 S. E. 390.

License, effect of plea of, to prosecution for violation of liquor law. *Paulk*, 104/734, 31 S. E. 200.

No conviction of selling liquor without, in territory in which sale is wholly prohibited. *Glover*, 4 A. 455, 61 S. E. 862; *Pughley*, 4 A. 494, 61 S. E. 886; *Batty*, 114/79, 39 S. E. 918; *Barker*, 117/430, 43 S. E. 744.

By valid statute; aliter where prohibited by unconstitutional act. *Edwards*, 123/542, 51 S. E. 630.

Liquor sale without, no conviction of, if impossible to obtain license legally. *Wells*, 118/559, 45 S. E. 443.

Liquor sale without, indictable in county where price of license is practically prohibitory. *Wells*, 118/557, 45 S. E. 443.

Laws of 1881 for Screven county, as to sale without, constitutional as to misdemeanor provision. *Burns*, 104/544, 30 S. E. 815.

Laws for Coffee and other counties as to, not invalid as in conflict with general domestic-wine act of 1877. *Roberts*, 114/541, 40 S. E. 750.

No revocation of, for violation of law, unless indictment allege defendant was licensed dealer. *Newman*, 101/534, 28 S. E. 1005.

Illegal sale of liquor where no one could procure required written consent to grant of. *Hodge*, 116/852, 43 S. E. 255.

Sale of liquor not prohibited by refusal of authorities to grant. *Rose*, 1 A. 596, 58 S. E. 20.

Intoxicating liquors—(Continued).

Liquor-selling without, recorder's court could not punish for, though done on Sunday. *Williams*, 111/849, 36 S. E. 607.

Liquor-selling without; conviction illegal; town charter authorized grant of the license. *Horn*, 114/510, 40 S. E. 768.

Liquor-selling without, a misdemeanor. If in municipality with authority to grant license, same must be produced to justify sale. *McGehee*, 114/833, 40 S. E. 1004.

Retailing liquor without, conviction for, not bar prosecution for keeping open tippling-house on Sunday. *Smith*, 105/724, 32 S. E. 127.

Conviction sustained by evidence of sale of intoxicant without. Matter of defense as to sale of domestic wine. *Sowell*, 126/105, 54 S. E. 916.

Liquor sale without, when city could not punish for. *Moran*, 102/840, 30 S. E. 298; *Aycock*, 104/533, 30 S. E. 815.

No conviction of sale without, on proof that whisky was illegally sold by another on premises of accused and by his consent. *Blankinship*, 112/402, 37 S. E. 732.

Retailing without, not shown by mere purchase by one for himself, and another and division between them. *Meadows*, 127/283, 56 S. E. 404.

Lean of liquor treated as sale, when. Not a sale under statute prohibiting sale without license. *Huby*, 111/842, 36 S. E. 301.

Local option law, indictment for sale in violation of, need not allege, nor proof show, adoption of law by popular vote. *Woodard*, 103/498, 30 S. E. 522. Invalidity of election, no defense. *Ib.*

Sale of liquor against, not shown by proof of sale of home-made blackberry wine. *Loid*, 104/724, 30 S. E. 961.

Intoxicating liquors—(Continued).

Liquor sale in violation of, by druggist selling rye whisky. *Varde-man*, 108/774, 33 S. E. 643.

Making liquor, a felony. *Williams*, 148/310, 96 S. E. 385. Conviction authorized. *Martin*, 148/406, 96 S. E. 882; *Yaughan*, 148/517, 97 S. E. 540; *Justice*, 7 A. 43, 65 S. E. 1070. Circumstances not warranting conviction. *Smith*, 16 A. 291, 85 S. E. 281.

Medicine composed of liquor, compounded with other ingredients, unlawful sale of. *Bradley*, 121/201, 205, 48 S. E. 981.

Capable of intoxicating and being used as beverage, sale of, rendered seller guilty of selling liquor without license. *Colwell*, 122/75, 37 S. E. 129.

Containing intoxicating liquor, when unlawful for druggist to furnish; good faith and physician's prescription no defense. *Bradley*, 121/201, 48 S. E. 981.

Merchant giving liquor to customer, whether he did so to induce trade, a question for the jury. *Meadows*, 121/362, 39 S. E. 268.

Minor, liquor sold to, burden on accused to show written authority from parent or guardian. *Graham*, 121/590, 49 S. E. 678.

Allegation of sale and furnishing to three, supported by proof of sale to one. *Southern Express Co.*, 1 A. 700, 58 S. E. 67.

Corporation may be guilty by delivering to, through agents; but evidence failed to show that agent made or knowingly permitted delivery. *Southern Express Co.*, 1 A. 700, 58 S. E. 67.

Offense not necessarily shown by proof of sale of domestic blackberry wine. *Loid*, 104/726, 30 S. E. 949.

Sale of liquor to, not made where minor in good faith acts merely as agent of adult buyer. *Harley*, 127/308, 56 S. E. 452.

Orders, taking of, for sale of liquor. *Walker*, 124/97, 52 S. E. 319.

Intoxicating liquors—(Continued).

Taking of, through telephone, from a different county, no offense in that county, though telephone was placed there for that purpose. *Moore*, 126/417, 55 S. E. 327. Issue as to agency of telephone manager. *Walker*, 122/747, 50 S. E. 994.

For liquor taken in "dry counties." *Smith*, 127/44, 56 S. E. 73; *Graves*, 127/46, 56 S. E. 72.

For sale of liquor in county where law prohibits sale, agent, as well as principal, punishable for soliciting. *Loeb*, 115/241, 41 S. E. 575.

Soliciting by circular sent by mail from point without State, no crime. *Rose*, 133/353, 65 S. E. 770, 36 L. R. A. (N. S.) 443.

For liquor, taking of, not penal in county where sale is not prohibited by law, high license or otherwise. *Rose*, 1 A. 596, 58 S. E. 20.

Ownership, materiality of, on trial for selling liquor. *Whitfield*, 2 A. 124, 58 S. E. 385; *Bonner*, 2 A. 711, 58 S. E. 1123.

Particular sale of liquor, when State not restricted to proof of. *Davis*, 105/783, 32 S. E. 130; *Green*, 115/254, 41 S. E. 642.

Payment of rent in liquor constituted a sale. *Griffin*, 115/577, 41 S. E. 997.

Penalty, effect of absence of provision for, in dispensary law. *Barker*, 117/433, 43 S. E. 744.

Place of business, meaning of. *Jones*, 17 A. 118, 86 S. E. 284; *Jenkins*, 4 A. 859, 62 S. E. 574; *Roberts*, 4 A. 207, 60 S. E. 1082. "At" place of business, keeping in near-by room is, when. *Jenkins*, 4 A. 859, 62 S. E. 574. Keeping at public place. *Roberts*, 4 A. 207, 60 S. E. 1082; *Tooke*, 4 A. 495, 61 S. E. 917.

Possession of liquor for illegal sale, no State offense, and punishable by town. *Paulk*, 104/728, 31 S. E. 200.

For illegal sale, proof sufficient to show. *Sawyer*, 2 A. 159, 58 S. E. 399.

Intoxicating liquors—(Continued).

Private use, keeping liquor for, unlawful. *Delaney*, 146/547, 91 S. E. 561.

Prohibitory law for one place suspends local operation of general law forbidding sale except on prescribed condition; but not general law making penal sales in places where sale is prohibited by law. The local and general prohibitory laws stand together, and indictment lies under either. *Barker*, 118/35, 44 S. E. 874; *Blake*, 118/333, 45 S. E. 249.

Receiving money, ordering whisky and delivering it, prima facie case of guilt. *Smith*, 127/43, 56 S. E. 73; *Graves*, 127/46, 56 S. E. 72; *Gaskins*, 127/51, 55 S. E. 1045; *Bonner*, 2 A. 711, 58 S. E. 1123. Proof that accused received money and soon thereafter delivered whisky puts on him burden of showing where, how, and from whom he got it. Jury may discredit his statement. *Mack*, 116/540, 42 S. E. 776. Presumption that one delivering liquor, and receiving money for, is seller; when not arise. *Williams*, 107/696, 33 S. E. 641. See *Billups*, 107/766, 33 S. E. 659.

"Sale," what is, under law prohibiting sale of liquor. *Cunningham*, 105/678, 31 S. E. 585.

School, sale of liquor within three miles of. *Mason*, 1 A. 534, 58 S. E. 139.

Special act to prohibit sale of liquor, invalid as in conflict with general law. *Edwards*, 123/542, 51 S. E. 630; *Griffin*, 114/65, 39 S. E. 913; *Harris*, 114/436, 40 S. E. 315. Local act valid. It suspended, not repealed, general law. *Ib.* See *Collins*, 114/70, 39 S. E. 916. Act here did not infringe on general law. *Hancock*, 114/439, 40 S. E. 317.

Prohibiting sale in Thomas and Cobb counties, constitutional. *Smith*, 112/291, 37 S. E. 441.

Prohibiting sale, except by dispensary, and prescribing no penalty, is within P. C. 1895, § 428. *Barker*, 118/35, 44 S. E. 874.

Intoxicating liquors—(Continued).

For Wilkes, conviction under, since general local option law, not upheld. *Caldwell*, 101/557, 29 S. E. 263.

As to selling liquor, unconstitutional; conviction upheld under general law. *Griffin*, 115/577, 41 S. E. 997.

Of 1877 for St. Simons Island, liquor-selling in violation of. *James*, 124/72, 52 S. E. 295.

Local option act for Troup county, not unconstitutional on grounds specified. *Robinson*, 111/841, 36 S. E. 201.

Sunday, one selling domestic wines on, convicted of pursuing her "ordinary calling" on Sunday, though at other times engaged chiefly in other occupations. *Reed*, 119/562, 46 S. E. 837.

Liquor-selling on, validity of city ordinance as to. *Mayor*, 115/313, 41 S. E. 572.

Keeping open tippling-house on, city ordinance in terms of statute as to, given same construction; momentary opening sufficient; purpose not considered. *McCarty*, 121/365, 49 S. E. 287.

Tax. P. C. 1895, § 450, as to sale of domestic wines or other intoxicants without paying, not apply to liquors covered by other laws prohibiting sale. *Barker*, 117/428, 43 S. E. 744. Liquor-dealer failing to register and pay tax, law as to, not applied to one selling in county where sale totally prohibited. *Collins*, 114/70, 39 S. E. 916. Tax act of 1900 is declaratory of existing code law, but prescribes different punishment. *Burgamy*, 114/852, 40 S. E. 991. Manufacturer who did not sell in this State, not subject to tax by act of 1898; otherwise by act of 1900. *McNeely*, 114/831, 40 S. E. 996.

Third person, conducting purchaser, at his request, to seller of liquor, was not a participant in sale, though he passed the money from the one to

Intoxicating liquors—(Continued).

the other. *Black*, 112/29, 37 S. E. 108.

Time of liquor-selling, what must appear as to. *Bell*, 126/443, 55 S. E. 230.

Testimony as to sales more than two years before indictment, inadmissible. *Erwin*, 121/580, 49 S. E. 689.

Not shown whether before or after indictment, conviction set aside. *Bragg*, 126/442, 55 S. E. 232.

No bar to prosecution under city ordinance for selling. *Bell*, 126/443, 55 S. E. 230.

Conviction of selling liquor in last two years, good plea in bar to second conviction for sale to same person. *Reynolds*, 114/265, 40 S. E. 234.

Conviction on proof of any date within limitation period. *Cole*, 120/485, 48 S. E. 156; *Watts*, 120/496, 497, 48 S. E. 142.

Transporting liquor for unlawful sale, covered by State law. *Lanford*, 147/799, 95 S. E. 688.

Unconstitutional statute, conviction under, of liquor selling, set aside. *Papworth*, 103/36, 31 S. E. 402; *O'Brien*, 109/51, 35 S. E. 112; *Embry*, 109/61, 35 S. E. 116; *Tinsley*, 109/822, 35 S. E. 303. Defendant convicted under, should be discharged on habeas corpus. *Moore*, 109/62, 35 S. E. 116.

Variance immaterial, between allegations and proof as to part of person on which liquor was kept, where the offense charged was violation of ordinance prohibiting possession on person for purpose of sale. *Collins*, 17 A. 817, 88 S. E. 716.

See catchwords, *Agency*, *Beer*, *Church*, *Minor*. See also *Liquors*.

Intoxication and profanity on public highway a misdemeanor. *Johnson*, 130/30, 60 S. E. 160.

In public place; evidence authorizing conviction. *Teal*, 17 A. 556, 87 S. E. 830. Intoxication on highway; what is "boisterousness," or "indecent" con-

duct, a jury question. *Sullivan*, 17 A. 122, 86 S. E. 287.

In public place. Reckless driving and other circumstances could be considered sufficient manifestations of; former cases distinguished. *Sullivan*, 17 A. 122, 86 S. E. 287.

In public place, when not unlawful. *Dorsey*, 7 A. 372, 66 S. E. 1096.

In residence of another; description of offense, in affidavit and warrant, sufficient. *Pye*, 9 A. 397, 71 S. E. 594.

In residence of another, manifested by indecent condition, without words or harmful act; "indecent condition" may exist in degree of intoxication. *Ford*, 10 A. 442, 73 S. E. 605.

In residence of another. "Curtilage," defined; language held profane and vulgar; error in not charging jury as to their right so say what is profane or vulgar language, etc. *Haines*, 8 A. 627, 70 S. E. 84.

Vulgar, profane, and unbecoming language, judge may charge jury that to call a woman "a damned son of a bitch," is. *Haines*, 8 A. 627, 70 S. E. 84.

Means drunkenness with alcohol, not opium or other drugs. *Ring*, 112/857, 38 S. E. 330.

On church grounds; conviction not warranted by evidence. *Carewell*, 13 A. 624, 79 S. E. 589.

On highway. Allowing witness to use term "public street," not cause for reversal here. *Lovett*, 13 A. 71, 78 S. E. 857. Proper charge to jury. *Ib.*

On highway; conviction not warranted, where it was not shown, directly or circumstantially, that the road was a public highway. *Cleveland*, 4 A. 62, 60 S. E. 801.

On highway. Description of road, as a public road passing the residences of the two named landowners, sufficient in accusation. *Mathis*, 11 A. 95, 74 S. E. 713. Modes of proving that road is public road. *Ib.*

On highway. Court divided in opinion as to how it may be shown that the

place is a "public street or highway." *Stringfield*, 4 A. 842, 843, 62 S. E. 569.

On highway, manifested by "unbecoming language;" conviction authorized. *Barrentine*, 18 A. 726, 90 S. E. 372.

On highway. Meaning of "indecent condition or acting." *Howell*, 14 A. 414, 81 S. E. 247; *Davis*, 14 A. 569, 570, 81 S. E. 906. Reckless driving not "indecent condition or acting." *Ib.*; *Peterson*, 13 A. 766, 79 S. E. 927.

On highway. One vomiting on his person and clothing may thereby place himself in that condition though he does so involuntarily while drunk. *Lovett*, 13 A. 72, 78 S. E. 857.

On highway or within curtilage of private residence. Evidence warranting conviction. *Riggins*, 15 A. 398, 83 S. E. 503. Conviction not warranted *Bell*, 15 A. 718, 84 S. E. 150.

On highway. Proof necessary that highway or street legally became such; sufficient proof. *Lovett*, 13 A. 71, 78 S. E. 857.

On highway. Proof required as to establishing of public road; statement of witness, that road was public road sufficient, if not objected to at trial. Conviction not supported by proof of intoxication not on, but near highway. *Hutchinson*, 8 A. 684, 70 S. E. 63.

On highway, sufficiency of description of offense in affidavit and warrant. *Pye*, 9 A. 399, 71 S. E. 594. What constitutes highway. *Davis*, 9 A. 430, 71 S. E. 603.

On highway. What is "indecent condition," a jury question. *Lovett*, 13 A. 74, 78 S. E. 857.

On public highway; proof necessary for conviction; error in charge to jury. *Johnson*, 1 A. 195, 58 S. E. 265.

Operating automobile on highway while intoxicated. *Burch*, 18 A. 290, 89 S. E. 341.

On public street or highway or within curtilage of private residence must be manifested by conduct specified in statute. Evidence showed guilt here. *Coleman*, 3 A. 298, 59 S. E. 829.

See catchword, Church.

Intruder, homicide in evicting. *Rossi*, 7 A. 732, 738, 68 S. E. 56.

Justifiable homicide after mutual combat, law as to, when not applied. *Smith*, 106/673, 32 S. E. 851, 71 Am. St. R. 286. When applicable. *Dill*, 106/688, 32 S. E. 660.

Against attack or invasion of habitation or property. *White*, 2 A. 412, 58 S. E. 686.

Burden to show. *Delk*, 135/312, 69 S. E. 541, 22 Ann. Cas. 105.

By one who provoked difficulty; erroneous instruction to jury. *Smarrs*, 131/22, 61 S. E. 914.

Charge as to, error, but too favorable to accused. *Dill*, 106/683, 32 S. E. 660.

Charge error, as to effect of words, threats, menaces, etc. *Clay*, 124/795, 53 S. E. 179. Charge error, in excluding theory of prisoner's statement. *Garland*, 124/834, 53 S. E. 314.

Different defenses of, should not be confused. *Lightay*, 2 A. 442, 58 S. E. 686; *Lee*, 2 A. 481, 58 S. E. 676.

Distinct defenses of, must not be confused in charge to jury. Penal Code, §§ 70, 71, not limited or qualified by § 73, which denotes mutual combat. *Pugh*, 114/16, 39 S. E. 875; *Heard*, 114/90, 39 S. E. 909; *Davis*, 114/106, 39 S. E. 906. Error here to make advance by deceased necessary to justification of accused. *Reeves*, 114/86, 39 S. E. 918.

Distinct defenses of, must not be confused. Where no mutual combat, Penal Code, § 73, must not be given in charge. *Wheeler*, 112/43, 37 S. E. 126; *Freeman*, 112/48, 37 S. E. 172; *Mell*, 112/78, 37 S. E. 121; *Moultrie*, 112/121, 37 S. E. 122.

Distinct defenses of, not to be confused; one code section not limited by others. *Rucker*, 135/391, 69 S. E. 541; *Paschal*, 135/660, 70 S. E. 253; *White*, 147/377, 94 S. E. 222; *Teasley*, 104/738, 30 S. E. 938; *Holland*, 3 A. 465, 60 S. E. 205; *Warnack*, 3 A. 590, 60 S. E. 288; *Mills*, 133/155, 65 S. E. 368; *Hall*, 133/177, 65 S. E. 400. Evi-

dence and charge considered. *Allen*, 133/260, 65 S. E. 43; *Rhodes*, 133/723, 66 S. E. 887.

Distinction between defenses of. *Powell*, 101/11, 29 S. E. 309, 65 Am. St. R. 277.

Evidence raised issue as to. *Jones*, 139/104, 76 S. E. 748.

Excusable and justifiable homicide, at common law and under the code. *Powell*, 101/23, 29 S. E. 309, 65 Am. St. R. 277.

Facts did not warrant submission of issue as to. *Holton*, 137/87, 72 S. E. 949.

From necessity, real or apparent, to prevent trespass amounting to felony. *Draw*, 136/658, 71 S. E. 1108.

Harmless error in charge on, where no theory of justification appeared. *Rawls*, 124/11, 52 S. E. 72. Charge not erroneous. *Tolbirt*, 124/773, 53 S. E. 327. Charge negating, no error for reversal here; manslaughter found. *Rogers*, 124/794, 53 S. E. 102.

In combat; requirement of showing necessity to kill in order to save slayer's life, etc. *Bailey*, 148/401, 96 S. E. 862.

In defense against assault or battery. *Helms*, 136/799, 72 S. E. 246; *Johnson*, 136/804, 72 S. E. 233.

In defense against attempted felony. *Helms*, 138/827, 76 S. E. 353.

In defense of attempted felony of habitation or property, not shown. *Rouse*, 136/356, 71 S. E. 667.

In defense of habitation not shown. *Watson*, 136/236, 71 S. E. 122.

In defense of habitation or property, no issue as to, without evidence. *Brannon*, 140/788, 80 S. E. 7.

In defense of habitation, though deceased was attempting less than felony. *Smith*, 106/673, 32 S. E. 851, 71 Am. St. R. 286.

In defense of person against felony, defense of. *Turner*, 131/761, 63 S. E. 294; *Taylor*, 131/765, 63 S. E. 296.

In defense of self against assault on person of self or wife. *Riley*, 3 A. 534, 60 S. E. 274.

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In defense of self against attack. *Worley*, 136/232, 71 S. E. 153.

In defense of self against attempt to arrest illegally, accompanied by force apparently felonious. *Jenkins*, 3 A. 146, 59 S. E. 435.

In defense of self against felony, and of habitation against entry for assault or violence, must not be confused. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

In defense of self against felony, issue as to. *Norton*, 137/842, 74 S. E. 759.

In defense of self, habitation or property, against felony; misleading charge. *Freeman*, 1 A. 277, 57 S. E. 924.

In defense of self, in mutual combat and otherwise. *Morgan*, 137/21, 72 S. E. 347; *Cargile*, 137/775, 74 S. E. 621.

In defense of self or parent or child, under reasonable fear of felony, etc. *Alexander*, 118/26, 44 S. E. 851.

In defense of self or sister; and real and apparent danger. *Varner*, 139/613, 614, 77 S. E. 808.

In self-defense. *Rouse*, 135/228, 69 S. E. 180; *Williams*, 1 A. 508, 57 S. E. 939.

In self-defense, evidence did not raise theory of. *Miller*, 139/716, 78 S. E. 181.

In self-defense, law of, applied without using language of statute. *Williams*, 139/688, 77 S. E. 1062.

In summing up contentions of accused jury should be distinctly informed of his right to acquittal. *Waller*, 102/684, 28 S. E. 284.

Instances on same footing of reason and justice as those enumerated in code. *Swain*, 135/219, 69 S. E. 170; *Mize*, 135/292, 69 S. E. 173. Compare *Brown*, 135/656, 659, 70 S. E. 329.

Is not, by fear of great bodily harm less than felony. *Freeman*, 112/48, 37 S. E. 172; *Chestnut*, 112/367, 37 S. E. 384.

Issue of, on trial for killing arresting officer. *Yates*, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620.

Killing wife in company of paramour is not. **Jackson**, 135/684, 70 S. E. 245.

In defense of brother blameless or at fault, under necessity apparent or real. **Warnack**, 3 A. 590, 60 S. E. 288.

No error in refusing to charge jury inaccurate statements concerning. **Jefferson**, 137/388, 73 S. E. 499.

Defense of, not dependent on both actual necessity and sufficient basis of reasonable fear. **Smith**, 147/689, 95 S. E. 281.

No theory of, presented by evidence or by statement of accused. **Merck**, 137/89, 72 S. E. 896; **Wiggins**, 101/502, 29 S. E. 26.

Not shown. Defense of person against felony. **Floyd**, 143/286, 84 S. E. 971. Protection of relative. **Kitchens**, 143/290, 84 S. E. 966.

Of one attempting felony of any grade. **Powell**, 101/11, 29 S. E. 309, 65 Am. St. R. 277.

Of one unlawfully breaking dwelling-house; his apparent intent determines. **Horton**, 110/740, 35 S. E. 659.

Not shown by killing in revenge for previous offense to wife of accused. **Perry**, 102/366, 30 S. E. 903.

Killing for past sexual act with slayer's wife or daughter is not. **Patterson**, 134/264, 67 S. E. 816.

Right of self-defense not forfeited by past wrong to daughter of man attacking. **Brown**, 135/656, 70 S. E. 329.

On reasonable fear of felony, not in spirit of revenge. **Pierce**, 132/36, 63 S. E. 792; **Pickens**, 132/46, 63 S. E. 783; **Pressley**, 132/64, 63 S. E. 784.

On reasonable fear, to prevent felony on person; principle stated. **Jones**, 147/356, 94 S. E. 248.

Prevention or defense an essential element of. **Mize**, 135/292, 69 S. E. 173.

Right of mutual protection to brothers, sisters, husband and wife, parent and child. **Warnack**, 3 A. 596, 60 S. E. 288.

Right of one in charge of property to protect it against robbery. **Jordan**, 135/434, 69 S. E. 562.

Shooting in self-defense. **Hays**, 112/193, 37 S. E. 404; **Frazier**, 112/868, 869, 38 S. E. 349.

To prevent apparently attempted felony. **Stubbs**, 110/916, 36 S. E. 200.

To prevent commission of felony on person; instructions to jury sustained. **Butler**, 143/484, 485, 85 S. E. 340.

To prevent commission of rape on wife; not in revenge for prior attempt to rape. **Ellison**, 137/194, 73 S. E. 255; **Short**, 140/781, 80 S. E. 8. See **Lynn**, 140/342, 79 S. E. 29.

To prevent debauching of daughter; former ruling applied. **Swain**, 135/219, 69 S. E. 170. See **Mize**, 135/292, 69 S. E. 173; **Brown**, 135/656, 659, 70 S. E. 329.

Homicide to prevent "grievous bodily harm" not amounting to felony would not be. **Lindsay**, 138/818, 821, 76 S. E. 369.

To prevent felony. **Powell**, 101/11, 29 S. E. 309, 65 Am. St. R. 277.

Under fear of reasonable man, issue as to. **Crawley**, 137/777, 74 S. E. 537.

Under reasonable fear aroused by threats, menaces, etc. **Price**, 137/71, 72 S. E. 908; **Futch**, 137/75, 72 S. E. 911; **Adkins**, 137/81, 72 S. E. 897; **Ellison**, 137/194, 73 S. E. 255; **Holland**, 3 A. 466, 60 S. E. 205; **Warnack**, 3 A. 590, 60 S. E. 288; **Dorsey**, 2 A. 230, 58 S. E. 477. In defense against felony attempted. **Curtis**, 2 A. 224, 58 S. E. 291; **Reeves**, 2 A. 415, 58 S. E. 548; **Lee**, 2 A. 481, 58 S. E. 676. Not shown. **Rouse**, 136/356, 71 S. E. 667.

Under reasonable fear of felony. **Roberts**, 114/451, 40 S. E. 297; **Rosebero**, 127/826, 56 S. E. 991; **Devereaux**, 140/225, 78 S. E. 849; **Short**, 140/780, 80 S. E. 8.

Under reasonable fear of felony by blow with hand. **Herrington**, 130/816, 320, 60 S. E. 572.

Under reasonable fear of felony on habitation, person, or property, though no real necessity to kill in order to pre-

vent attack. *Palmour*, 116/269, 42 S. E. 512.

Upon evidence of threat and assault. *Tillman*, 136/59, 70 S. E. 876.

When provocation of difficulty and creation of necessity to defend bars defense of. *Riley*, 3 A. 534, 60 S. E. 274. Compare *Warnack*, 3 A. 590, 60 S. E. 288.

Not shown by necessity to defend, created by accused at fault at time of killing. *Campbell*, 144/224, 87 S. E. 277.

In mutual combat. *Ricketson*, 134/306, 67 S. E. 881.

Killing because of mere threats and menaces not treated as. *Vernon*, 146/709, 92 S. E. 76.

In preventing felony, questions of necessity and of reasonable fears. *Lyons*, 133/587, 66 S. E. 792.

Evidence of justification or mitigation, to rebut presumption of malice from proof of homicide. *Smarrs*, 131/21, 61 S. E. 914.

Duty of accused admitting homicide to show justification, if not apparent from evidence offered against him. *Roseboro*, 127/826, 56 S. E. 991.

Circumstances of justification or mitigation, in evidence of the State, may be relied on by accused. *Anderson*, 122/176, 50 S. E. 51; *Ellison*, 137/194, 73 S. E. 255; *Dolk*, 135/312, 69 S. E. 541, 22 Ann. Cas. 105.

No burden of proof as to justification or mitigation of homicide, unless accused committed it. *Beach*, 138/266, 75 S. E. 139. Justification tested by result, not intent. *Nixon*, 101/577, 28 S. E. 971.

Kidnapping by conspiring to aid girl under fourteen years of age to escape for purpose of marriage. *Handley*, 115/585, 41 S. E. 992.

By enticing, etc.; evidence not warranting conviction, in case of girl under 18 years of age, but of age of discretion, who went off with the accused. *Hendon*, 10 A. 78, 72 S. E. 522.

Conviction warranted, though girl

induced to leave her parents was a prostitute and had temporarily been allowed to live away from them and keep wages. *Hunt*, 8 A. 374, 69 S. E. 42.

By enticing etc.; evidence warranting conviction of man inducing girl not 18 years old, by promise of marriage, to leave home and spend night with him in the same county. *Carter*, 14 A. 51, 80 S. E. 206. Effect of evidence as to his being married, or not. *Carter*, 14 A. 52, 80 S. E. 206. Girl's testimony as to sexual intercourse with accused, admissible to show intent. *Ib.* 52.

Evidence authorizing conviction. *Sheffield*, 18 A. 697, 90 S. E. 356.

Of child under age, statute as to. defines two offenses. Essential allegation of indictment. *Sutton*, 122/158, 50 S. E. 60. When abduction considered forcible. *Ib.* 159.

Weak evidence of, supported conviction. *Barker*, 1 A. 286, 57 S. E. 989.

Laborer or cropper, attempting to entice away; ingredients of offense; sufficiency of indictment alleging actual service, but not specifically alleging contract. *Hudgins*, 126/639, 55 S. E. 492.

Attempt to prevent from remaining in employment; indictment sufficient, evidence not. *Robbins*, 119/570, 46 S. E. 834.

Threatened, to prevent work; evidence warranting conviction. *Binyard*, 126/636, 55 S. E. 498.

Landlord of premises used for unlawful purpose, what necessary to convict. *Kessler*, 126/727, 55 S. E. 93, 8 Ann. Cas. 180.

Responsibility of, for illegal use of premises, rented with knowledge of intention so to use them. *Moody*, 14 A. 523, 81 S. E. 588. Error in charge to jury as to opportunity to know. *Ib.*

Larceny.

Accomplice not sufficiently corroborated by circumstances here. *Butler*, 17 A. 522, 87 S. E. 712.

Larceny—(Continued).

Admissibility of proof that defendant and another were often seen together about the time and at the place of the supposed larceny. *Rice*, 6 A. 160, 64 S. E. 575.

Of testimony, tending to show other larcenies by defendant. *Ray*, 4 A. 70, 60 S. E. 816.

Admission of slaughter and sale of cow, coupled with claim that it was bought in good faith, was not confession, or direct evidence of larceny of cow. *Hart*, 14 A. 714, 82 S. E. 164.

Aiding and abetting others in larceny. *Hargrove*, 117/708, 45 S. E. 58.

Makes one a principal in misdemeanor. *Folsom*, 11 A. 202, 74 S. E. 939.

Instruction to jury as to. *Mitchell*, 125/28, 53 S. E. 810.

Amount charged in indictment where larceny was of money to be changed, whether should be amount delivered or amount not returned. *Finkelstein*, 105/624, 31 S. E. 589.

Animus furandi must be proved. *Musgrove*, 5 A. 467, 63 S. E. 538; *Simmons*, 2 A. 638, 58 S. E. 1066.

No evidence of, conviction set aside. *Williams*, 10 A. 142, 72 S. E. 719.

Asportation, proof of, when sufficient. *Johnson*, 9 A. 409, 71 S. E. 507; *Waller*, 23 A. 157, 97 S. E. 876.

Not shown, conviction set aside. *Smith*, 15 A. 400, 83 S. E. 437.

Removal to any distance, sufficient. *Mitchell*, 21 A. 77, 93 S. E. 1022.

Attempt to commit larceny; evidence warranting conviction. *Tinker*, 125/743, 54 S. E. 662.

Automobile tools; larceny of; conviction warranted. *Brown*, 14 A. 505, 81 S. E. 590.

Bailee's possession distinguished from custody of servant. *Jackson*, 21 A. 147, 94 S. E. 55. See catchword, *Bailees*.

"Bills," in indictment for stealing money, "to wit, two twenty-dollar

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bills," etc., held to mean bank-bills. Proof not showing kind of money stolen, insufficient. *Johnson*, 119/257, 45 S. E. 960.

Bona fide claim of right as defense of larceny. *Smith*, 11 A. 385, 75 S. E. 447; *Brown*, 14 A. 505, 81 S. E. 590.

Incorrect charge that the claim must be acquired by purchase, not require reversal, here. *Brundage*, 7 A. 728, 67 S. E. 1051.

Larceny not committed, where property taken under. *Lee*, 102/221, 29 S. E. 264.

Defense that taking was under; conviction upheld, though evidence as to larcenous intent was very weak. *Thomas*, 7 A. 337, 66 S. E. 962; See *Klias*, 7 A. 589, 67 S. E. 682.

Taking under; animus furandi not shown in case of one taking back his own property which had been seized under levy. *Paschal*, 12 A. 293, 77 S. E. 109.

Conviction set aside, because the evidence showed that the taking was under, and failed to show intent to steal. *Musgrove*, 5 A. 467, 63 S. E. 538.

Charge as to, not error. *Lee*, 103/587, 30 S. E. 553.

Evidence authorized inference as to; but conviction was authorized. *Parsons*, 1 6A. 296.

Publicity of taking as evidence of. *Brundage*, 7 A. 727, 67 S. E. 1051.

Issue whether hogs were taken under, properly submitted. *Stewart*, 5 A. 368, 63 S. E. 141.

Borrower, larceny by. *Bryant*, 8 A. 389, 69 S. E. 121; *Munn*, 12 A. 479, 77 S. E. 591. Larceny by, of borrowed article, what necessary to constitute. *Abrams*, 121/170, 48 S. E. 965.

Evidence authorizing inference of larcenous intent. *Rice*, 6 A. 160, 64 S. E. 575.

Charge of court as what must be proved to sustain accusation of larceny of

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money, not erroneous. **Martin**, 17 A. 612, 87 S. E. 844.

Argumentative and tending to discredit statement of accused. **Daniel**, 17 A. 774, 88 S. E. 694.

Theft of three hogs alleged, theft of four proved; proper charge to jury. **Everett**, 15 A. 390, 83 S. E. 428; **Cartledge**, 15 A. 396, 83 S. E. 430.

Circumstances (tracks, etc.), not authorizing conviction of larceny (of cotton). **Sandlin**, 22 A. 115, 95 S. E. 477. See **Jackson**, 22 A. 131, 95 S. E. 537; **Vance**, 22 A. 800, 97 S. E. 275.

Not sufficient to show larceny (wagon tracks, possession of similar corn to that taken, denial of possession of corn, etc.). **Reynolds**, 22 A. 552, 96 S. E. 499.

Authorizing conviction of cow-stealing. **Clark**, 22 A. 125, 95 S. E. 529.

Showing venue. **Cook**, 9 A. 208, 70 S. E. 1019.

Weak and unsatisfactory, sufficient to authorize conviction. **Blount**, 18 A. 204, 89 S. E. 78.

Sufficient to convict of stealing sheep which were only temporarily missing. **Clark**, 19 A. 145, 91 S. E. 231.

Sufficiency of, as to larceny of cattle. **Watson**, 118/66, 44 S. E. 803; **Butts**, 118/750, 45 S. E. 593. Of hogs. **Jackson**, 118/780, 45 S. E. 604.

Suspicious, but not sufficient to warrant conviction. **Mathis**, 10 A. 77, 72 S. E. 526.

Authorizing conviction of larceny of seed-cotton. **Latty**, 19 A. 621, 91 S. E. 942.

Not authorizing conviction of larceny of cottonseed. **Harris**, 19 A. 741, 92 S. E. 225.

Authorizing conviction of hog-stealing. **Cotton**, 21 A. 507, 508, 94 S. E. 589.

Authorizing conviction. **Chandler**, 18 A. 141, 89 S. E. 157; **Gantz**, 18

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A. 154, 88 S. E. 993; **McCoy**, 18 A. 698, 90 S. E. 355; **Parris**, 17 A. 478, 87 S. E. 707; **Gurley**, 10 A. 841, 74 S. E. 441; **Brown**, 13 A. 144, 78 S. E. 868; **Belmas**, 15 A. 288, 82 S. E. 819; **Wilson**, 15 A. 632, 84 S. E. 81.

Not warranting conviction. **Randolph**, 16 A. 328, 85 S. E. 258; **Sneed**, 16 A. 351, 85 S. E. 354; **Williams**, 11 A. 723, 75 S. E. 1135; **Duke**, 11 A. 844, 76 S. E. 599; **Lindsey**, 15 A. 13, 82 S. E. 378; **Sheppard**, 21 A. 49, 93 S. E. 534; **Brooks**, 21 A. 661, 94 S. E. 810.

Circumstantial evidence as to larceny must exclude every reasonable hypothesis but that of intent to steal. **Grow**, 5 A. 73, 62 S. E. 669.

Facts not making case of, alone.

Love, 9 A. 874, 72 S. E. 433.

Contract, accused's understanding as to meaning of, considered in determining whether guilty of larceny in appropriating money. **Phelps**, 109/115, 34 S. E. 210.

Conviction warranted. **Akin**, 22 A. 273, 95 S. E. 872; **Garr**, 22 A. 745, 97 S. E. 197; **Jordan**, 18 A. 44, 88 S. E. 825; **Knight**, 18 A. 702, 749, 90 S. E. 287, 488; **Brown**, 19 A. 619, 91 S. E. 939; **Perry**, 19 A. 619, 91 S. E. 939; **Kennedy**, 19 A. 625, 91 S. E. 1002; **Jenkins**, 19 A. 626, 91 S. E. 944; **Goldberg**, 20 A. 162, 92 S. E. 957; **Bailey**, 5 A. 79, 62 S. E. 676; **Daniel**, 23 A. 83, 97 S. E. 411; **Stewart**, 23 A. 139, 97 S. E. 871.

Warranted by evidence as to presence at taking, and as to sale of stolen goods. **Joiner**, 18 A. 19, 88 S. E. 707.

Not authorized; presumption from possession rebutted, and corpus delicti not proved. **Franklin**, 3 A. 342, 59 S. E. 835.

Disqualifies from service as juror. **Williams**, 12 A. 337, 77 S. E. 189.

Of larceny on indictment for burglary. **Hutchins**, 3 A. 300, 59 S. E. 848. On facts showing larceny from

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railroad-car. **Howard**, 3 A. 659, 60 S. E. 328.

Of simple larceny upheld though the evidence showed also larceny after trust. **Bryant** 8 A. 389, 69 S. E. 121.

Corn not sufficiently identified as corn alleged to have been stolen. **Dowdell**, 19 A. 752, 92 S. E. 287.

Corpus delicti shown. **Boatwright**, 10 A. 29, 72 S. E. 599.

Established by circumstantial evidence, as to larceny of hog. **McCrary**, 20 A. 194, 92 S. E. 954.

Not shown, and confession uncorroborated; conviction set aside. **Hines**, 5 A. 491, 63 S. E. 583.

Proved by circumstantial evidence. **Ray**, 4 A. 67, 60 S. E. 816; **Hutchings**, 4 A. 451, 453, 61 S. E. 837.

Sufficient; shown by circumstantial evidence in connection with incriminatory admission. **Garnett**, 10 A. 114, 72 S. E. 951; **Stanley**, 10 A. 153, 72 S. E. 954.

Cotton, larceny of, proved by accomplice, corroborated by circumstances. **McCrory**, 101/780, 28 S. E. 921.

Baled, larceny of; place where stored immaterial, if venue alleged and proved. No conviction on proof that accused bought from one who stole bale. **Hall**, 120/142, 47 S. E. 519. Evidence established guilt, and circumstances identified the stolen bale as the one alleged. **Johnson**, 120/509, 48 S. E. 199.

Bales of, precise proof of alleged weight not necessary. **Green**, 114/918, 41 S. E. 55.

Cow, larceny of, circumstances warranting conviction of. **Turner**, 111/217, 36 S. E. 686; **Baker**, 17 A. 279, 86 S. E. 530, **Graham**, 16 A. 221, 84 S. E. 981.

Denotes a female animal, horned, with cloven hoofs. **Wheeler**, 12 A. 15, 88 S. E. 712.

"Blue and white speckled" cow; meaning of "blue," as applied to cow. Venue of cow-stealing suffi-

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ciently shown by circumstances. **Graham**, 16 A. 221, 84 S. E. 981.

Right to take up animal as estray; error in refusing to charge jury as to, in case of one accused of cow-stealing. **Samples**, 18 A. 286, 89 S. E. 375.

Stealing dead cow, not larceny, when. **Hunter**, 13 A. 651, 79 S. E. 752.

Cropper, conversion by, of part of crop to his own use, is not larceny. **Lane**, 113/1040, 39 S. E. 463.

Conviction of simple larceny set aside in case of cropper going away with mule turned over to him by landlord to make crop. **Lanier**, 17 A. 262, 86 S. E. 417.

Debt, larceny by taking property in payment of, without owner's consent. **McKenzie**, 8 A. 125, 68 S. E. 622.

Larceny by stealing property pledged for. **Henry**, 110/750, 36 S. E. 55, 78 Am. St. R. 137.

Declarations of accused, admissibility of; when res gestæ. **Lanier**, 126/586, 55 S. E. 496.

Definition of simple larceny, or of larceny; omission not held error. **Stewart**, 23 A. 139, 97 S. E. 871.

Description of bicycle, sufficient. **Adams**, 21 A. 152, 94 S. E. 82.

Of stolen animal not contradictory as to sex (heifer and young cow of ox species). **Adams**, 22 A. 786, 97 S. E. 201.

Of property, sufficient. **Shaw**, 10 A. 776, 74 S. E. 89. Evidence more minute than, but not inconsistent with indictment, admissible. **Gibson**, 114/34, 39 S. E. 948.

Unnecessarily full as to property must be proved, when. Cases cited. **Moore**, 13 A. 15, 78 S. E. 772.

Distinction between simple larceny and larceny after trust; former decisions discussed; conviction of simple larceny set aside. **Pittman**, 13 A. 705, 79 S. E. 915; **Rice**, 6 A. 161, 64 S. E. 575; **Lanier**, 17 A. 262, 86 S. E.

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417; Wright, 18 A. 337, 89 S. E. 432.

Between simple larceny and larceny after trust, in case of one receiving money to be changed. Basley, 10 A. 470, 73 S. E. 624. One taking article with consent of owner's agent entrusted with custody. Smith, 14 A. 17, 80 S. E. 22. Accused induced witness to let him carry jug of whisky. Cunnegin, 118/125, 44 S. E. 846.

Between simple larceny and entering and stealing from railroad-car. Williams, 105/745, 31 S. E. 749.

Between larceny and embezzlement. Robinson, 109/565, 34 S. E. 147.

Between simple larceny, cheating and swindling, and larceny after trust. Finkelstein, 105/624, 31 S. E. 589. Distinction between simple larceny and larceny from person. Hecox, 105/625, 31 S. E. 592.

Between larceny and robbery. Moran, 125/34, 53 S. E. 806. See Morris, 125/36, 53 S. E. 564.

Drunkenness, as affecting intent. Walker, 9 A. 863, 72 S. E. 446.

Employing another to steal an article from the owner, where the person so employed acted with the owner's consent and as his agent, not larceny. Edmondson, 18 A. 233, 89 S. E. 189.

Evidence not sufficient to show theft of article missed from trunk in room and later found in another part of the room, there being no evidence that it was taken from the room. Jackson, 15 A. 555, 83 S. E. 797.

Insufficient as to codefendant. Forrester, 125/28, 53 S. E. 767.

That more was stolen than accusation alleged; when not ground for arresting judgment for want of jurisdiction. Seals, 107/713, 33 S. E. 392.

Weak as to intent, but sufficient to authorize conviction. Adams, 12 A. 808, 78 S. E. 473. Evidence not showing larceny, but sufficient to

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show guilt of receiving stolen goods. Miller, 12 A. 550, 77 S. E. 891.

Making case of simple larceny, not of receiving stolen goods. Folsom, 11 A. 202, 74 S. E. 939.

As to tracks and other circumstances here, sufficient to uphold conviction. Stiles, 113/700, 39 S. E. 295.

Weak, but sufficient to convict. McIver, 16 A. 502, 85 S. E. 629; Jones, 17 A. 479, 87 S. E. 688; Brown, 17 A. 808, 88 S. E. 691; Allen, 8 A. 90, 68 S. E. 558; Moulton, 8 A. 380, 69 S. E. 32; Jones, 21 A. 504, 94 S. E. 629.

Weak and barely sufficient to support conviction. Ryon, 12 A. 813, 78 S. E. 477.

Weak and circumstantial, not legally insufficient. Gaston, 9 A. 824, 72 S. E. 285; McBride, 9 A. 855, 72 S. E. 446.

Insufficient, and no proof of value, new trial. White, 120/145, 47 S. E. 547.

Warranting conviction. Coleman, 9 A. 422, 71 S. E. 493; Royster, 9 A. 424, 71 S. E. 491; Jones, 9 A. 879, 72 S. E. 436; Hutchings, 4 A. 451, 61 S. E. 837; Coppage, 4 A. 696, 62 S. E. 113; Taylor, 4 A. 740, 62 S. E. 482; Hines, 5 A. 491, 63 S. E. 583; Davis, 5 A. 602, 63 S. E. 597; Peeples, 5 A. 706, 63 S. E. 719; Beasley, 12 A. 256, 77 S. E. 100; Tedder, 13 A. 629, 79 S. E. 580; Wardlaw, 119/132, 45 S. E. 971; Owens, 119/304, 46 S. E. 433; Mitchell, 125/27, 53 S. E. 810.

Demanding conviction. Chapman, 23 A. 359, 362, 98 S. E. 243.

Not warranting conviction. Belmas, 12 A. 363, 77 S. E. 188; Taylor, 12 A. 615, 77 S. E. 1132; Cannon, 12 A. 637, 77 S. E. 920; Milner, 7 A. 82, 66 S. E. 280; Thomas, 7 A. 337, 66 S. E. 964; Bush, 7 A. 607, 67 S. E. 685; Banks, 7 A. 812, 68 S. E. 334; Walker, 4 A. 77, 60 S. E. 803; Mitchell, 103/17, 29 S. E. 435;

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Grow, 5 A. 73, 62 S. E. 669; **Wright**, 5 A. 177, 62 S. E. 712; **Wilson**, 5 A. 228, 62 S. E. 1003; **Jamison**, 5 A. 305, 63 S. E. 25; **Musgrove**, 5 A. 467, 63 S. E. 538; **Daniels**, 5 A. 472, 63 S. E. 583; **Mungin**, 3 A. 108, 64 S. E. 281.

Did not authorize conviction of one selling goods furnished by another. **Thompson**, 23 A. 160, 97 S. E. 864.

Finder, larceny by, in retaining property found. **Flemister**, 121/146, 48 S. E. 910; **Slaughter**, 113/287 38 S. E. 854, 84 Am. St. R. 242.

Question as to intent, not make case of circumstantial evidence. **Love**, 9 A. 875, 72 S. E. 433.

Foreign jurisdiction, bringing in goods stolen in, is not larceny, in Georgia. **Golden**, 2 A. 440, 58 S. E. 557.

Forgery, larceny accomplished by means of, no reason for not convicting of larceny. **Currie**, 3 A. 309, 59 S. E. 926.

Former acquittal under indictment not correctly describing animal stolen, bars subsequent prosecution, when. **Burch**, 4 A. 384, 61 S. E. 503.

Fraudulently inducing delivery to him with understanding that property is to be his, not render one guilty of larceny. **Welch**, 126/495, 55 S. E. 183.

Good faith, defense that article was taken in, with request to charge it on account. **Dozier**, 12 A. 724, 78 S. E. 203.

Grade of larceny, when not increased by evidence that defendant stole more than accusation alleged. **Seals**, 107/713, 33 S. E. 392.

Habit of servants to appropriate surplus of employers, discussed. **Johnson**, 9 A. 412, 71 S. E. 507.

Of carrying off articles from premises, when relevant as tending to show absence of criminal intent. **Southern Ry. Co.**, 6 A. 43, 64 S. E. 308.

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Hog, larceny of, a felony: punishment therefor. **Wells**, 116/89, 42 S. E. 390.

Conviction authorized. **Addis**, 120/180, 47 S. E. 505; **Everett**, 15 A. 390, 83 S. E. 428.

Larceny of dead hog, not offense of hog-stealing. **Paulk**, 5 A. 567, 63 S. E. 659; **Moses**, 8 A. 446, 69 S. E. 575; **Smith**, 11 A. 385, 75 S. E. 447.

Material issue of intent to steal or to kill only. **Paulk**, 2 A. 660, 662, 58 S. E. 1108, 1109.

Horse, wilfully riding or driving, without owner's consent, not involved in trial for larceny of horse. **Tucker**, 114/61, 39 S. E. 926.

Identification of goods without special mark to distinguish them from others of the same kind stolen from store. **Chandler**, 18 A. 141, 89 S. E. 157; **McCoy**, 18 A. 698, 90 S. E. 355.

Insufficient, of property (hogs). conviction set aside. **Stewart**, 9 A. 501, 71 S. E. 755.

Of stolen goods, what sufficient. **Jordan**, 119/444, 46 S. E. 679.

Of cattle stolen, sufficiently proved; venue proved. **Dean**, 6 A. 250, 64 S. E. 671.

Indictment for stealing flour and tobacco of specified brands, not supported by proof that flour and tobacco were stolen, without showing that either was of the brand alleged. **McLendon**, 121/158, 48 S. E. 902.

When error to admit evidence as to loss of articles not set out in. **Hawkins**, 6 A. 109, 64 S. E. 289; **Walker**, 5 A. 430, 432, 63 S. E. 534.

For larceny, sustained by proof of larceny from chicken-coop, whether or not proof of larceny from house would be sufficient. **Willis**, 102/572, 28 S. E. 917.

Inducing larceny in order to detect criminal. **Slaughter**, 113/286, 38 S. E. 854, 84 Am. St. R. 242. See **Dalton**, 113/1037, 39 S. E. 468.

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Infant, larceny by; burden of proof as to his capacity. *Singleton*, 124/136, 52 S. E. 156.

Larceny by receiving property from infant who stole it. *Rice*, 118/48, 44 S. E. 805, 98 Am. St. R. 99.

Intent to steal essential in larceny. Defense of bona fide claim to be submitted to jury. *James*, 114/96, 39 S. E. 946; *Cleveland*, 114/110, 39 S. E. 941. See *Tucker*, 114/63, 39 S. E. 926.

Error in not qualifying instruction to jury, by charging as to. *Russell*, 13 A. 561, 79 S. E. 495.

Facts not sufficient to show, as to intoxicated man. *Coleman*, 122/135, 50 S. E. 56.

To steal cow driven off by the accused, sufficient evidence as to. *Lowther*, 16 A. 289, 85 S. E. 208.

Evidence of, exceedingly weak and unsatisfactory, but verdict not set aside. *Johnson*, 9 A. 409, 71 S. E. 507; *McWhorter*, 9 A. 437, 71 S. E. 589.

Larceny not shown, where no satisfactory proof that accused knew of the true ownership and took with criminal intent; it appearing they took believing the property belonged to their father. *Harrell*, 110/258, 34 S. E. 289.

Formed after having obtained possession, not render conversion larceny, when. *Abrams*, 121/171, 48 S. E. 965.

Erroneous charge as to, *Musgrove*, 5 A. 467, 63 S. E. 538.

Instruction not subject to the exception that it withdrew from consideration this element of the crime. *Belmas*, 15 A. 288, 82 S. E. 819.

Levy, larceny of one's own property while under. *Ayers*, 3 A. 305, 59 S. E. 924.

Larceny of property under; facts not authorizing conviction. *Russell*, 13 A. 561, 79 S. E. 495.

Meaning of "thing," in code section as to larceny of money, "or any other

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thing," under the value of \$50. *Edmondson*, 18 A. 234, 89 S. E. 189. Sufficient value. *Ib.* 240.

Memoranda of evidence and signed statements of witnesses, whether stealing of, was larceny. *Edmondson*, 18 A. 234, 89 S. E. 189.

Money taken from accused and money taken from his brother, admitting in evidence, when not error, in case of larceny of money. *Watts*, 8 A. 205, 68 S. E. 863.

One receiving, to be changed, and not returning correct change, guilty of simple larceny, when. *Finkelstein*, 105/617, 31 S. E. 589; *Hecox*, 105/625, 31 S. E. 592; *Kerr*, 105/655, 31 S. E. 739; *Walker*, 9 A. 863, 72 S. E. 446.

Evidence sufficient as to theft of and its value. *Ector*, 120/544, 48 S. E. 315.

Larceny by offering to procure desired change for, not returning it on demand and running away with intent to steal it. *Fitzgerald*, 118/855, 45 S. E. 666.

Larceny by one who picked up money when dropped by another, and at first refused to surrender it and denied having it, but gave it up when threatened with arrest. *Pierce*, 18 A. 432, 89 S. E. 430.

Larceny not committed where A. pretending he wished to send money to another, induced B to pay for a money order issued to A, and got the money on it. *Welch*, 126/495, 55 S. E. 183.

Description and proof sufficient. *McDonald*, 2 A. 633, 58 S. E. 1067.

Production and identification of national bank bill is evidence of its face value. *Joiner*, 124/102, 52 S. E. 151.

Misdescription of figures on bills, not material here. *Smith*, 8 A. 458, 69 S. E. 598.

Newly discovered evidence as to possession of stolen goods by another, before found in defendant's posses-

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sion, required new trial. **Howell**, 5 A. 612, 63 S. E. 600.

Requiring new trial. **Grow**, 5 A. 70, 62 S. E. 669.

Other offenses than the particular larceny charged, admissibility of testimony as to. **Goldberg**, 20 A. 163, 92 S. E. 957; **McDuffie**, 17 A. 343, 86 S. E. 821.

Owner taking property from possession of another did not commit larceny. **Newell**, 16 A. 380, 85 S. E. 353.

Conviction set aside, on evidence as to consent of. **Watson**, 6 A. 801, 65 S. E. 813.

Want of consent of, to taking, not supplied by ratification. **Holsey**, 4 A. 455, 61 S. E. 836.

Larceny not committed by taking and use without consent of, but without intent to steal. Essentials of larceny. **Hartford Ins. Co.**, 12 A. 712, 78 S. E. 265.

Acquiescence of, after the act. not destroy criminal element. **Waters**, 15 A. 342, 83 S. E. 200.

Ownership, proof of, insufficient to convict of. **Riley**, 1 A. 651, 57 S. E. 1081.

Proof of statements of accused as to, intent illustrated by. **Clanton**, 17 A. 474, 87 S. E. 691.

Allegation of, supported by proof of possession, when. **Hall**, 7 A. 115, 66 S. E. 390; **Peterson**, 6 A. 491, 498, 65 S. E. 311. See **Betts**, 6 A. 773, 65 S. E. 841.

Sufficiently shown by proof that the stolen property (money) was taken from the alleged owner. **Martin**, 17 A. 612, 87 S. E. 844.

Papers relating to title, larceny of. **Hanson**, 13 A. 372, 79 S. E. 176.

Partner retiring, appropriation by, of money received in payment of firm debt, when not larceny. **Phelps**, 109/115, 34 S. E. 210.

Possession of stolen goods as a circumstance to show. **McElroy**, 125/37, 53 S. E. 759; **Turner**, 111/217, 36 S. E. 686; **Sparks**, 111 830, 35

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S. E. 654; **Calloway**, 111/832, 36 S. E. 63; **Peterson**, 6 A. 491, 65 S. E. 311.

Not satisfactorily explained, conviction upheld. **Hudson**, 121/147, 48 S. E. 903; **Bone**, 121/147, 48 S. E. 986; **Stafford**, 121/169, 48 S. E. 903.

Explained. **Williams**, 125/268, 54 S. E. 166.

Effect of equivocal statement as to. **Wright**, 6 A. 772, 65 S. E. 806.

As a circumstance tending to show guilt. Failure to charge as to recovery of. **Sharpe**, 105/588, 31 S. E. 541. Or as to possession. **Jones**, 105/649, 31 S. E. 574.

Constructive possession of stolen goods. **Gantz**, 18 A. 154, 88 S. E. 993.

Burden of explanation as to; error in admitting testimony that defendant's wife contradicted his explanation in his presence. **Wicker**, 14 A. 665, 82 S. E. 58.

Error in charge of court as to inference from. **Thomas**, 18 A. 19, 88 S. E. 720. No error in instruction as to effect of such possession. **Temples**, 18 A. 510, 89 S. E. 600; **Pritchett**, 18 A. 737, 90 S. E. 492.

Error in charge to jury, as to effect of recent possession of stolen goods, unexplained. **Wilkes**, 11 A. 384, 75 S. E. 443. Proper charge as to. **Strickland**, 11 A. 417, 75 S. E. 491; **Scott**, 14 A. 806, 80 S. E. 376.

Error in not charging jury as to explanation of. **Mayfield**, 17 A. 115, 86 S. E. 284.

No error in allowing proof of defendant's possession of other stolen articles, with property described in indictment. **Martin**, 10 A. 795, 74 S. E. 304.

Admissibility of testimony as to possession, by wife of accused, of money of the same denomination as that stolen, as a circumstance to show guilt. **Buckine**, 121/337, 49 S. E. 257.

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Sufficiency of explanation of, a jury question; evidence here was "exceedingly weak," but sufficient. *Mosley*, 11 A. 303, 75 S. E. 144.

No error in charge as to presumption from. *Latty*, 19 A. 622, 91 S. E. 942.

Recent possession of stolen goods, as evidence; articles not described in indictment, but taken from same house, admissible, when. *Scott*, 14 A. 806, 82 S. E. 376.

Not recent, must be aided by other evidence, for conviction. *Turner*. 114/45, 39 S. E. 863. Recent possession, not satisfactorily explained, creates no presumption of law, and is not necessarily proof of guilt. *Gravitt*, 114/841, 40 S. E. 1003, 89 Am. St. R. 63.

Recent and unexplained, a circumstance to be considered by jury, but does not raise presumption of law that the possessor is guilty of the theft. *Harris*, 18 A. 710, 90 S. E. 370; *Kinard*, 19 A. 624, 91 S. E. 941.

Recent, and false statement by accused as to person from whom he obtained it, made prima facie case of. *Scott*, 119/425, 46 S. E. 637.

Recent; law does not specify time. *Joseph*, 110/775, 36 S. E. 61.

Whether sufficiently explained, a jury question. *Bridges*, 9 A. 235, 70 S. E. 968; *Jordan*, 9 A. 578, 71 S. E. 875; *Gilliard*, 17 A. 364, 86 S. E. 939; *Stewart*, 17 A. 827, 88 S. E. 715; *Jones*, 4 A. 273, 61 S. E. 133. Presumption from, rebutted. *Sanford*, 4 A. 449, 61 S. E. 741. When not authorize conviction. *Bryant*, 4 A. 851, 62 S. E. 540.

Satisfactorily explained by uncontradicted testimony, conviction set aside. *Peoples*, 5 A. 706, 68 S. E. 719.

Six weeks after the larceny, whether "recent." *Chandler*, 18 A. 142, 143, 89 S. E. 157. False explanation of possession, circumstance

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tending to show guilt. *Gantz*, 18 A. 154, 88 S. E. 993.

Presumption from. *Chandler*, 18 A. 142, 89 S. E. 157. Presumption from recent possession of stolen goods, error in omitting word "recent" from charge, harmless here. *Rayfield*, 10 A. 48, 72 S. E. 515.

Principal in larceny, by continuing to aid removal after discovery of theft. *Green*, 114/918, 41 S. E. 55.

Punishable by deprivation of right to vote, etc., even where statute does not provide for imprisonment or fine. *Jenkins*, 14 A. 279, 80 S. E. 688.

Railroad car, larceny from. *Moore*, 14 A. 256, 80 S. E. 507.

Larceny from, unauthorized conviction of, for want of proof of corpus delicti. *Varner*, 3 A. 605, 60 S. E. 283. For want of proof of venue. *Howard*, 3 A. 659, 60 S. E. 328.

Stealing ride on railroad train is offense, though not subject of larceny. *Pressley*, 118/315, 45 S. E. 395.

Receiver of stolen goods not convicted of larceny. *Springer*, 102/452, 30 S. E. 971.

Is not accomplice with principal thief. *Bridges*, 9 A. 235, 70 S. E. 968.

Charge of court as to, discussed. *Blumenthal*, 121/477, 49 S. E. 597.

Removal of property any distance whatever by one taking it with intent to steal is larceny. *Mitchell*, 21 A. 77, 93 S. E. 1022.

Return thing taken, intent to, as affecting guilt. *Edmondson*, 18 A. 233, 89 S. E. 189; *Slaughter*, 113/287, 38 S. E. 854, 84 Am. St. R. 242; *Hamilton*, 18 A. 295, 89 S. E. 449; *Currie*, 3 A. 309, 59 S. E. 926.

Taking for temporary use, with intent to return, not larceny; taking with intent to appropriate a pecuniary right or interest in the property is. *Adams*, 12 A. 808, 78 S. E. 473. Sale of property made, seller converting it to his own use is guilty of lar-

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ceny. *Meacham*, 7 A. 714, 58 S. E. 52.

Larceny not committed by one fraudulently inducing another to sell him goods on credit, the intention being that the title should pass. *Foster*, 117/39, 43 S. E. 421.

Larceny by one not taking the property himself, but selling it to a person who takes it away. *Smith*, 15 A. 400, 83 S. E. 437; *Smith*, 11 A. 197, 74 S. E. 1093.

Several articles of different owners, stolen at one time, one larceny; one indictment may include all; conviction as to one of the articles prevents subsequent prosecution as to another, though omitted from first indictment. *Dean*, 9 A. 571, 71 S. E. 932.

Shooting to prevent larceny, not justifiable, when. *Beddingfield*, 13 A. 624, 79 S. E. 581.

Simple larceny charged in indictment, larceny from house proved, conviction of offense charged upheld. *McConnell*, 17 A. 752, 88 S. E. 408; *Mattox*, 115/213, 41 S. E. 709.

Charged in indictment, larceny from house proved, general verdict of guilty warranted. *Gardner*, 105/662, 31 S. E. 577.

Conviction of, under charge of larceny from house. *Patterson*, 122/587, 50 S. E. 489. But not supported by evidence here. *Blandford*, 115/824, 42 S. E. 207.

Conviction of, under indictment for larceny from person, legal. *Thomas*, 5 A. 840, 63 S. E. 1124; *Lavender*, 107/707, 33 S. E. 420.

Conviction under accusation of, upheld, though the evidence also made out a case of larceny after trust. *Martin*, 123/478, 51 S. E. 334.

When committed by one who first lawfully obtained possession. *Finkelstein*, 105/619, 81 S. E. 589.

Larceny—(Continued).

Statements of decedent not under oath, larceny not proved by. *Cody*, 124/446, 52 S. E. 750.

Tenant disposing of crop, to injury of landlord, not guilty of larceny. *Teel*, 7 A. 600, 67 S. E. 699.

Time when committed and value of stolen article, not proved, conviction set aside. *May*, 111/840, 36 S. E. 222.

"Value," in law as to larceny, does not necessarily mean money value or market value. *Gates*, 20 A. 171, 92 S. E. 974.

Shown by fact that goods were sold, though price not proved. *Greenfield*, 14 A. 603, 81 S. E. 814.

Not shown by fact that the goods taken had been sold, though price or quantity not proved. *Tolver*, 10 A. 33, 72 S. E. 516. Error in admitting proof as to, not require new trial, when. *Ib.* 34.

Of stolen cotton and cottonseed, proof as to, vague and indefinite, but sufficient. *McConnell*, 17 A. 752, 88 S. E. 408.

Some value must be proved, in larceny of cow. *Portwood*, 124/783. 53 S. E. 99.

Larceny of article of trifling value. *Taylor*, 139/578, 77 S. E. 373.

Of property was not destroyed by law prohibiting sale, etc. (of liquor). *Gates*, 20 A. 171, 92 S. E. 974; *Mance*, 5 A. 229, 62 S. E. 1053.

Of stolen property must appear. *Ayers*, 3 A. 305, 59 S. E. 924; *Lane*, 113/1040, 39 S. E. 463; *Bonjamin*, 105/830, 31 S. E. 739; *Wright*, 1 A. 158, 57 S. E. 1050.

What sufficient proof of. *Peterson*, 6 A. 491, 65 S. E. 311.

Variance in allegation and proof as to name of owner of stolen property. *Hall*, 22 A. 114, 95 S. E. 936.

Fatal, where accusation alleged ownership in A, B, and C, and possession in A, and the proof showed joint ownership in A and others, not

Larceny—(Continued).

B and C. Horton, 21 A. 120, 93 S. E. 1012.

In allegation and proof as to unknown ownership of property. Ray, 4 A. 67, 60 S. E. 816.

As to description of animal, whether material. Paulk, 5 A. 573, 63 S. E. 659.

Conviction of larceny of harness described in indictment as "black-leather" harness, not supported by proof of larceny of harness not so described in the evidence. Moore, 13 A. 15, 78 S. E. 772.

Substantial conformity of allegata and probata as to color of cow. Timmons, 14 A. 802, 82 S. E. 378.

Larceny of husband's goods alleged, title proved in wife, when no variance. Thomas, 125/286, 54 S. E. 182.

Substantial conformity of allegata and probata as to hog's spots and color. Holmes, 20 A. 181, 92 S. E. 963.

Watch, larceny of, description sufficient, and no fatal variance. Evidence sufficient as to ownership and possession, and as to intent to steal. Patterson, 122/587, 50 S. E. 489.

Whisky, larceny of. Baker, 14 A. 578, 81 S. E. 805.

Larceny from the house: amendment of Penal Code, section 175 or section 176 suggested. Jenkins, 13 A. 696, 79 S. E. 861.

Attempt of, may be found. Lowe, 112/189, 37 S. E. 401.

Burglary, larceny from house instead of, shown by facts here (taking from outhouse not within curtilage of dwelling). Wright, 12 A. 514, 77 S. E. 657. Larceny from house, conviction of, on facts making both that offense and burglary. Lockhart, 3 A. 480, 60 S. E. 215.

Chicken house, larceny from the house committed by stealing from. Gardner, 105/662, 31 S. E. 577; Will-

iams, 105/814, 32 S. E. 129, 70 Am. St. R. 82.

Circumstances (including finding in house a letter to defendant, which he admitted belonged to him), not sufficient to authorize conviction of larceny from the house. Culp, 21 A. 786, 95 S. E. 268. Circumstances authorizing conviction. Boyd, 20 A. 195, 92 S. E. 944; Jackson, 15 A. 179, 82 S. E. 771. Circumstances sufficient to convict one of taking a watch which was in a room when he entered and which was missing just after he left. Barlow, 13 A. 307, 79 S. E. 93. Circumstantial evidence of, excluding every reasonable hypothesis but guilt of accused. Sheffield, 1 A. 135, 57 S. E. 969.

Classes of, and penalty. Heard, 120/848, 48 S. E. 311.

Corpus delicti shown by circumstances. Patterson, 17 A. 341, 86 S. E. 782; McDuffie, 17 A. 342, 86 S. E. 821.

Evidence that accused carried the goods from the house, essential. Hicks, 101/581, 28 S. E. 917; Evidence insufficient. It did not appear that the alleged stolen article was lost, or was kept in the house. Hand, 110/257, 34 S. E. 286. Evidence sufficient to convict. Hargrove, 117/706, 45 S. E. 58; Gaines, 124/5, 52 S. E. 78; Joiner, 124/102, 52 S. E. 151; Biggers, 19 A. 604, 91 S. E. 919; Wiley, 3 A. 120, 59 S. E. 438; Lockheart, 3 A. 480, 60 S. E. 215; Jones, 12 A. 813, 78 S. E. 474. Evidence failed to support conviction of. Johnson, 1 A. 129, 57 S. E. 934; Sanders, 7 A. 803, 68 S. E. 307. Conviction not set aside, though based on evidence exceedingly weak, and of slight probative value. Henderson, 7 A. 811, 68 S. E. 333.

Includes simple larceny; conviction of the latter under accusation of the former, proper. Johnson, 9 A. 409, 71 S. E. 507; Blandford, 115/824, 42 S. E. 207.

Indictment for larceny from the house (passenger-depot), conviction under, sustained though the larceny was from a railroad-car therein. Bone,

121/147, 48 S. E. 986. Conviction of, under indictment for burglary. *Thomas*, 18 A. 101, 88 S. E. 917; *Ray*, 121/189, 48 S. E. 903. Conviction of, under accusation of, where the evidence makes case of burglary including larceny from house, is legal. *Green*, 119/120, 45 S. E. 990. Larceny from house and burglary, charged in different counts, and both proved, conviction of larceny from house upheld. *Cannon*, 125/785, 54 S. E. 692. Evidence properly confined to count of indictment which charged larceny from house. *Byrd*, 10 A. 214, 73 S. E. 34. Intent, essential element of, must be submitted to jury. *Glaze*, 2 A. 704, 58 S. E. 1126; *Ransom*, 2 A. 826, 59 S. E. 101.

Lodger's room, larceny from, is. *Farlinger*, 110/313, 35 S. E. 152.

Ownership of house and goods may be laid in owner's agent in possession. *Jackson*, 15 A. 179, 82 S. E. 771. Allegations of ownership in A, owner of the fee not sustained by proof that theft was committed in room of guest of B, who was in possession of house as tenant of A. *Trice*, 116/602, 42 S. E. 1008.

Penalty for. *Jones*, 146/187, 91 S. E. 67.

Place of business, meaning of. *Jones*, 12 A. 814, 815, 78 S. E. 474.

Porch, stealing from, larceny from house. *Johnson*, 2 A. 405, 58 S. E. 684; *Downer*, 10 A. 827, 74 S. E. 301.

Presumption from unexplained possession of stolen goods is not of law, but matter of inference. *Cuthbert*, 3 A. 600, 60 S. E. 322.

Possession unexplained; and identity of whisky for jury. *Cox*, 3 A. 609, 60 S. E. 283.

Privacy of taking sufficiently shown, and owner's consent not shown, as to taking article from his store by customer, though he then knew of it and said "Let him go," and a long time elapsed before prosecution. *Ashley*, 22 A. 620, 97 S. E. 83.

Section 175 of Penal Code, as to, creates a crime but does not prescribe punishment. *Jenkins*, 14 A. 276, 80 S. E. 688. Error in giving in charge the definition in § 175, and in not giving § 176. *Edmondson*, 18 A. 233, 89 S. E. 189. One indicted under § 175 can object to sentence, on the ground that the section prescribes no punishment. *Jenkins*, 13 A. 695, 79 S. E. 861. Proper mode of raising this objection. *Jenkins*, 13 A. 696, 79 S. E. 861. Larceny from house is punishable under §§ 177, 178, 179. (Ruling in *Jenkins* case, 13 Ga. App. 695, not followed). *Jones*, 19 A. 67, 90 S. E. 981. Trial under section 175 may create jeopardy. *Jenkins*, 14 A. 276, 86 S. E. 688.

Value of goods exceeding \$50, a felony; not in jurisdiction of city court. *Toliver*, 126/587, 55 S. E. 478.

Variance not material between allegations that the theft was from A's "outhouse" and proof of theft from his "cottonseed house." *Dowdy*, 6 A. 159, 64 S. E. 489.

Verdict "not guilty as charged in the indictment, but guilty of an attempt to commit larceny," valid. *Warren*, 12 A. 695, 78 S. E. 202.

Warehouse receipt, larceny from house by stealing. *Currie*, 3 A. 309, 59 S. E. 926.

Wharf covered but unenclosed, larceny from, is not larceny from house. *McCabe*, 1 A. 719, 58 S. E. 277.

Larceny after trust, borrower's theft is not, when. *Rice*, 6 A. 160, 64 S. E. 575.

Bailees indictable for, under Penal Code, § 191, not merely those of classes named or of like kind. *Belt*, 103/12, 29 S. E. 451.

Charge proper, as to exclusion of irrelevant transactions. *Bowen*, 16 A. 179, 84 S. E. 793. Error in giving entire code section as to this offense to jury, where part inapplicable. *Rucker*, 12 A. 633, 77 S. E. 1129.

Church corporation, larceny after trust by one authorized by, to collect subscriptions from others for its bene-

fit; evidence supports conviction. **Haupt**, 108/64, 33 S. E. 831.

Clerk of court in whose name funds were deposited in bank by litigant pending disposition of case, conviction authorized in case of. **Turner**, 18 A. 653, 90 S. E. 225.

Collection, one entrusted with bills for, is entrusted with the money collected. **Hagood**, 5 A. 80, 89, 62 S. E. 641. Larceny after trust by one entrusted with collection of notes; evidence warranting conviction. **Sharp**, 7 A. 749, 67 S. E. 1124; **Taylor**, 2 A. 723, 59 S. E. 12.

Conversion shown by refusal of demand, or by denial of having received money entrusted. **Bowen**, 16 A. 181, 182, 84 S. E. 793.

Culpable negligence no ingredient of; error in giving jury code definition of crime, including "criminal negligence." **Rucker**, 12 A. 632, 77 S. E. 1129.

Debt, evidence that accused was in, and needed money, relevant on question of motive. **Govatos**, 116/592, 42 S. E. 708.

Delegation of trust induced by accused with intent to convert the property entrusted; offense committed. **Walker**, 117/260, 43 S. E. 701.

Demand and refusal, as elements of. **Whitley**, 9 A. 90, 70 S. E. 686. Demand not necessary. **Turner**, 18 A. 653, 90 S. E. 225; **Birt**, 1 A. 150 57 S. E. 965; **Goodman**, 2 A. 438, 58 S. E. 558; **Hagood**, 5 A. 91, 62 S. E. 641. Not necessary under § 192 of Penal Code as amended by act of 1910. **Lewis**, 17 A. 667, 87 S. E. 1087. Not necessary under first clause of § 189; general verdict of guilty upheld. **Janes**, 19 A. 271, 91 S. E. 339.

Different transactions alleged, one proved; conviction upheld. **Hagood**, 5 A. 80, 62 S. E. 641.

Essentials of. **Goodman**, 2 A. 438, 58 S. E. 558; **Birt**, 1 A. 150, 57 S. E. 965. Proof of bailment, purpose of trust, and fraudulent conversion, sufficient to convict. **Bowen**, 16 A. 179, 84 S. E. 793.

Evidence, admissibility of. **McCrary**, 11 A. 787, 76 S. E. 163.

Evidence warranting conviction. **Smith**, 121/618, 49 S. E. 677; **McKenzie**, 8 A. 124, 68 S. E. 622. **McLendon**, 14 A. 737, 82 S. E. 317; **Carter**, 17 A. 373, 86 S. E. 938; **Waters**, 15 A. 342, 83 S. E. 200; **Chancey**, 18 A. 328, 89 S. E. 461; **Innes**, 20 A. 719, 93 S. E. 229.

Facts making case of. **Snow**, 5 A. 608, 63 S. E. 651. Facts constituting; conviction of simple larceny set aside. **Smith**, 14 A. 17, 18, 80 S. E. 22; **Lanier**, 17 A. 262, 86 S. E. 417. Facts making case of, not simple larceny. **Barron**, 126/92, 54 S. E. 812; **Pittman**, 13 A. 705, 79 S. E. 915. Facts making case of, and not authorizing conviction of larceny from house. **Wright**, 18 A. 337, 89 S. E. 432.

Fraudulent conversion inferable from failure and refusal to return money intrusted. **Lewis**, 17 A. 667, 87 S. E. 1087. Conviction not upheld on merely technical conversion; it must be fraudulent. **Almand**, 110/883, 36 S. E. 215, 78 Am. St. R. 140.

Indictment, where proof showed purpose of trust was different from that alleged in, conviction not authorized. **White**, 19 A. 230, 91 S. E. 280.

Intent to defraud not shown, conviction set aside. **Wood**, 11 A. 242, 74 S. E. 1100. Intent illustrated by other transactions. **McCrary**, 11 A. 787, 76 S. E. 163.

Joint owner of promissory note collecting and converting to his own use the full amount. **Sewell**, 23 A. 765, 99 S. E. 320.

Meaning of "any other bailee," in code section as to larceny after trust. **McCrary**, 11 A. 787, 76 S. E. 163.

Misdemeanor case tried as felony; error discovered before sentence, prima facie harmless. **Lewis**, 17 A. 667, 87 S. E. 1087.

Misdemeanor, under act of 1910, punishable under accusation in city court. **Hamilton**, 11 A. 41, 74 S. E. 446. Provision reducing offense to misdemeanor where amount converted

does not exceed \$50 is not applicable where money is delivered in installments as parts of a larger sum under a single agreement and more than \$50 so delivered is converted. *McCoy*, 19 A. 32, 90 S. E. 737.

Mortgagor entrusted with check payable to him, to have mortgage transferred to the person from whom he received the check, larceny after trust by. *Grier*, 18 A. 738, 90 S. E. 490.

Offer to pay back money; no error in charging jury that such an offer "would not affect the crime, if any," and that settlement of the case without authority of court would be compounding felony. *McCoy*, 19 A. 32, 35, 90 S. E. 737.

Ownership, indictment should allege; larceny after trust in not applying property to use of one other than person delivering it. *Norfleet*, 9 A. 853, 72 S. E. 447.

Pawnbroker convicted of defrauding transferee of pawn-ticket issued to another by conversion of article exhibited by defendant to the transferee as property represented by the ticket. *Wilensky*, 15 A. 360, 83 S. E. 276.

Presumption that conversion was with fraudulent intent. *McLendon*, 14 A. 737, 82 S. E. 317.

Restitution, effect of. *Hagood*, 5 A. 86, 87, 62 S. E. 641.

School trustee entrusted with money advanced by cotrustees to pay teachers, the amount to be returned when collected from school commissioner, larceny after trust by. *Battle*, 7 A. 619, 67 S. E. 692.

Servant receiving money from employer to be changed, and not returning change or money, guilty of. *Basley*, 10 A. 470, 73 S. E. 624. Larceny after trust, not simple larceny, if servant steal money entrusted to him to be changed and returned. Fiduciary relation, or technical trust, as distinguished from dealing at arm's length. *Mobley*, 114/544, 40 S. E. 728.

Simple larceny and larceny after trust in the same transaction. *Walker*, 9 A. 864, 72 S. E. 446; *Bryant*, 8 A.

389, 69 S. E. 121; *Martin*, 123/478, 51 S. E. 334.

Son deposited, in his mother's name, money collected for her, and drew it out on checks signed by him in her name, and used it. *Sewell*, 23 A. 766-7.

Testimony that one of those who entrusted money said they had authorized accused to use some of it, inadmissible. *Green*, 112/638, 37 S. E. 885.

Timber to be sawed into lumber, one entrusted with, is bailee of both timber and lumber. *Chaffin*, 5 A. 368, 63 S. E. 230.

Larceny from person, circumstances authorizing conviction of. *McDonald*, 21 A. 125, 94 S. E. 262.

Conspiracy to commit, shown by evidence here. *Carroll*, 121/197, 48 S. E. 909.

Distinguished from robbery. *Bowen*, 16 A. 110, 84 S. E. 730.

Intent to steal, taking pistol from pocket without, is not larceny from person. *Jackson*, 116/578, 42 S. E. 750.

Includes simple larceny. *Lavender*, 107/707, 33 S. E. 420; *Wells*, 121/372, 49 S. E. 319.

Knowledge; larceny from person not committed by taking money from one with his knowledge. *Stewart*, 10 A. 442, 73 S. E. 602. Larceny from person may be committed though the victim "may be or become almost contemporaneously" aware of the taking; no error in so charging jury. *Watts*, 8 A. 205, 68 S. E. 863.

Privacy of taking not shown, acquittal directed; defendant could not be tried under subsequent indictment for simple larceny, based on same transaction, as against plea of former jeopardy. *Thomas*, 5 A. 840, 63 S. E. 1124.

Snatching purse was not, under facts here, but was robbery. *Smith*, 117/320, 43 S. E. 736, 97 Am. St. R. 69. Larceny from person by suddenly snatching purse. *Spencer*, 106/692, 32 S. E. 849.

Evidence showed larceny from person, not robbery. *Morris*, 125/36, 53 S. E. 564.

Lascivious conduct, when admissible as tending to show subsequent fornication. *Bass*, 103/227, 29 S. E. 966.

Lewd house. Admissibility and effect of evidence as to reputation of house and inmates. *Ward*, 14 A. 110, 80 S. E. 295; *Jones*, 14 A. 811, 82 S. E. 470; *Scott*, 15 A. 533, 83 S. E. 861; *Smith*, 13 A. 241, 79 S. E. 51; *Ward*, 22 A. 257, 95 S. E. 872.

Circumstances authorizing conviction. *Vickers*, 23 A. 315, 98 S. E. 97.

Effect of evidence as to reputation of house and inmates. *Wilkes*, 23 A. 727, 99 S. E. 390.

Evidence did not authorize conviction. *Wilkes*, 23 A. 797, 99 S. E. 390.

Not necessary to prove particular acts of fornication or adultery. *Fitzgerald*, 10 A. 71, 72 S. E. 541. Reputation of keeping, not alone sufficient to convict. *Watson*, 10 A. 794, 74 S. E. 89.

Reputation of defendant and her house, for lewdness, not alone sufficient to convict, but sufficient in connection with other evidence here. *Flanagan*, 22 A. 620, 97 S. E. 82.

Reputation of house and inmates, admissible as corroborative evidence, but not itself sufficient to convict of keeping; adultery or fornication must be proved; proof may be circumstantial; erroneous charge to jury. *Coleman*, 5 A. 766, 64 S. E. 828.

Woman convicted of maintaining, on evidence that in her mother's house while living with the mother she had sexual intercourse with three men on one occasion. *Ward*, 22 A. 786, 97 S. E. 198.

All persons aiding, directly or indirectly, in keeping, are guilty as principals. *Ward*, 22 A. 786, 97 S. E. 198; *Kessler*, 119/301, 36 S. E. 408.

Conviction of keeping, not warranted; evidence that the house was a disorderly house, not sufficient here. *Ward*, 14 A. 110, 80 S. E. 295.

Defendant's reputation not admissible, where defendant has not put character in issue. *Ward*, 14 A. 110, 80 S. E. 295.

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Definition of, in charge of court, not required, without request. *Wilkinson*, 18 A. 330, 89 S. E. 460. Punishment for keeping, not held excessive, when within statutory limit. *Ib.* 331.

House may be, though devoted chiefly to other purposes. *Fitzgerald*, 10 A. 70, 72 S. E. 541.

Knowledge of hotel keeper, as to lewd practices in his hotel, must be shown, to convict him of maintaining lewd house; reputation and other circumstances sufficient to show such knowledge. *Fitzgerald*, 10 A. 70, 72 S. E. 541. Such knowledge inferable from reputation and other circumstances. *Jones* case, 14 Ga. App. 811, 82 S. E. 470, not followed. *Basil*, 22 A. 765, 97 S. E. 259.

Landlord's mere knowledge of tenant's unlawful use of house, not make him particeps criminis. *Kessler*, 126/727, 55 S. E. 963, 8 Ann. Cas. 180.

Offense of keeping, when committed by leasing house to another, to be used as lewd house, or by permitting house to be so used. *Kessler*, 119/301, 46 S. E. 408.

Offense of maintaining, by executory sale of house afterwards conducted as lewd house, where sold for that purpose. *Kinard*, 10 A. 133, 72 S. E. 715. Offense of maintaining, not committed by one contracting for sale of house on installment plan to a lewd woman, who went into possession under bond for title from him and conducted it as a lewd house. Decision in *Kinard* case, 10 Ga. App. 133, disapproved. *Bennett*, 20 A. 170, 92 S. E. 943.

Proper instructions to jury. *Scott*, 15 A. 533, 83 S. E. 861.

City ordinance prescribing punishment for allowing house or part of house to be occupied as house of ill-fame, invalid, because State law covers the matter. *Cotton*, 10 A. 397, 73 S. E. 683; *Dannie*, 10 A. 471, 73 S. E. 684.

Municipal ordinance as to keeping a "dive" was not covered by State law as to lewd houses. *Smith*, 22 A. 45.

Joinder of offenses. Lewd and disorderly house. Indictment specific and definite. Reputation of house admissible, but must be corroborated, and may be overcome by evidence of good character. *Jones*, 2 A. 433, 88 S. E. 559.

Conviction of keeping, supported. *Mimbs*, 2 A. 387, 58 S. E. 499; *McConnell*, 2 A. 445, 58 S. E. 546; *Pender*, 115/831, 42 S. E. 224; *Scott*, 15 A. 533, 83 S. E. 861; *Smith*, 13 A. 241, 79 S. E. 51; *Brooks*, 12 A. 693, 78 S. E. 143.

Lighterage company not liable to penalty of ordinance to protect cotton, etc., where contract of lighterage was completed before alleged violation. *Savannah Lighterage Co.*, 112/189, 87 S. E. 424.

Loan at interest in excess of 5 per cent. per month, act of 1908 as to, valid. *King*, 9 A. 714, 72 S. E. 176. Indictment sufficient. *Ib.*

Included in the terms "otherwise dispose of," in statute forbidding tenant to "sell or otherwise dispose of" crop on which landlord has lien. *Bugg*, 17 A. 211, 213, 86 S. E. 405. Proof of loan will not support allegation charging sale only. *Ib.*

Lottery scheme (playing policy), conviction of, on proof of keeping or maintaining, without showing a drawing. Assistant liable as principal; and one waiting in absence of proprietor assists. *Thomas*, 118/774, 45 S. E. 622.

For merchant's customers to draw articles of value, in addition to those they pay for, is. *Meyer*, 112/20, 37 S. E. 96.

Evidence warranting conviction; charge of court as to, considered. *Townsend*, 14 A. 757, 82 S. E. 253. Meaning of "chance." *Ib.* 761.

Facts constituting; "suit club" conducted by a tailor receiving weekly payments, and holding weekly drawings for a suit, was, though each who made a stated number of the payments was entitled to a suit worth the amount paid. *DeFlourin*, 121/593, 49 S. E. 699, 104 Am. St. R. 177.

What necessary to constitute. *Equitable Loan Co.*, 117/599, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177; *Russell*, 129/154, 58 S. E. 981, 12 Ann. Cas. 129.

Lying and misrepresentation, prosecution for, void. *Collum*, 102/534, 27 S. E. 680.

Mad dog; right to shoot at. *Manning*, 6 A. 240, 64 S. E. 710.

"Magic healer," not within statute regulating practice of medicine. *Bennett*, 4 A. 293, 61 S. E. 546. Prima facie engaged in fraudulent practices, when. *Ib.*

Maiming cattle by shooting cow in udder. *Brown*, 127/287, 56 S. E. 405.

Burden on defendant, after proof of maiming, to show that it was done without malice and to prevent injury to property. *Barnes*, 17 A. 266, 86 S. E. 461.

Error in charge to jury, as to height of fence, immaterial, in view of evidence here. *Barnes*, 17 A. 266, 86 S. E. 461.

Unlawful to kill or maim for the first breaking of enclosure, or before notice to owner or his agent where notice is possible. *Barnes*, 17 A. 266, 86 S. E. 461.

Malice, absence of, differentiates manslaughter from murder. *Mize*, 135/298, 69 S. E. 173.

Charge, exceptions to, not well taken. *Mann*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934; *Tolbirt*, 124/768, 53 S. E. 327.

Circumstantial evidence raises the presumption. *Campbell*, 124/432, 52 S. E. 914.

Conduct tending to show. *Warrick*, 125/133, 53 S. E. 1027; *Green*, 125/742, 54 S. E. 724.

Declarations tending to show. *Roberts*, 123/148; 51 S. E. 374; *Campbell*, 123/533, 51 S. E. 644. Malice and motive shown by declaration of accused just before homicide. *Hill*, 148/521, 97 S. E. 442. Declarations of third person not admitted to show. *Bundrick*, 125/753, 54 S. E. 693.

Defined. *Long*, 127/350, 56 S. E. 444; *Mann*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 734. Defined; and when inferred from proof of homicide. *Worley*, 136/231, 71 S. E. 153.

Effect of allegations as to, as showing intent. *Smith*, 126/547, 55 S. E. 475.

Error in defining. When no legal presumption of, from admitted use of deadly weapon, etc. *Ricketson*, 134/306, 67 S. E. 881.

Evidence of prior cruelty as tending to show malice and motive for murder of wife. *Josey*, 137/769, 74 S. E. 282.

Express, defined. May be illustrated by reference to previous difficulty and threats shown by evidence. *Henderson*, 120/506, 48 S. E. 167.

Express; definition illustrated. *Johnson*, 139/92, 76 S. E. 859.

Harmless error in repelling evidence to rebut presumption of. *Carter*, 2 A. 254, 58 S. E. 532.

Homicide with; element of deliberation; intent for no considerable time before. *Goolsby*, 147/169, 93 S. E. 88.

Homicide with; instructions to jury considered. *Dennis*, 146/191, 91 S. E. 19; *Lucas*, 146/316, 91 S. E. 72.

Homicide with, without ill-will or hatred. *Anderson*, 146/193, 91 S. E. 26.

How inferred; not from use of deadly weapon. *Lanier*, 106/368, 32 S. E. 335. Unless such use result in death. *Stovall*, 106/447, 32 S. E. 586.

How manifested; error in charge of court as to. *Mixon*, 15 A. 252, 82 S. E. 935.

Implication of, from proof of homicide, where no satisfactory proof of motive. *Nathan*, 131/48, 61 S. E. 994.

Implied, in homicide. *Elder*, 143/383, 85 S. E. 197.

Inference of felonious killing where no extenuation or mitigation found. *Lampkin*, 145/40, 88 S. E. 563.

Instructions as to, in murder case, where defense was insanity. *Taylor*, 105/780, 31 S. E. 764.

Issue of, on evidence of unlawful homicide. *Devereaux*, 140/225, 78 S. E. 849; *Smith*, 140/791, 79 S. E. 1127.

Instructions to jury as to malice, manslaughter, and murder, not erroneous. *Smarrs*, 131/22, 61 S. E. 914.

May be implied from act done without intent to kill. *Curry*, 565, 97 S. E. 529.

Meaning of, in law as to homicide, or assault. *Posey*, 22 A. 102, 95 S. E. 325; *Killian*, 19 A. 750, 92 S. E. 227.

Momentary intent to kill as. *Coggin*, 147/53, 92 S. E. 882.

No error in definitions of. *Leonard*, 133/435, 66 S. E. 250; *Tucker*, 133/471, 66 S. E. 250; *Rhodes*, 133/723, 66 S. E. 887.

Not inferable from absence of fence, here; malicious killing of hog. *Crowder*, 10 A. 355, 73 S. E. 424.

Not presumed from admission of homicide, where coupled with exculpatory statement. *Curry*, 148/564, 97 S. E. 529. Evidence disclosing circumstances of justification or mitigation of homicide. *Surles*, 148/537, 97 S. E. 538.

Presumption of, from homicide; and burden of proof of mitigation or justification. *Johnson*, 130/27, 60 S. E. 160; *Burley*, 130/344, 60 S. E. 1006. See *Robinson*, 130/362, 60 S. E. 1005; *Ellison*, 137/194, 73 S. E. 255.

Presumption of malice and intent to kill, from manner of using deadly weapon. *Flannigan*, 135/221, 69 S. E. 171; *Worthan*, 141/307, 308, 80 S. E. 1001.

Presumption of, in case of destruction of another's fence. *Woods*, 10 A. 476, 479, 73 S. E. 608.

Presumption of, from proof of unlawful homicide. *Devereaux*, 140/225, 78 S. E. 849; *Warren*, 140/228, 78 S. E. 836; *Lynn*, 140/387, 79 S. E. 29, *Boyd*, 136/341, 71 S. E. 416; *Pressley*, 132/65, 63 S. E. 784; *Williford*, 121/173, 48 S. E. 962; *Chelsey*, 121/340, 340, 49 S. E. 258. Charge as to. *Nail*, 125/234, 54 S. E. 145. Proper charge as to. *Bradley*, 128/21, 57 S. E. 237;

Griggs, 17 A. 302, 86 S. E. 726. Charge of court as to, harmless to defendant convicted of manslaughter. **Driskell**, 20 A. 174, 92 S. E. 1007.

Presumption of, from homicide without circumstances of mitigation. **Nail**, 142/595, 83 S. E. 226; **O'Pry**, 142/600, 83 S. E. 228; **Delk**, 135/312, 69 S. E. 541, 22 Ann. Cas. 105; **Godfrey**, 135/571, 69 S. E. 1080; **Durham**, 138/817, 76 S. E. 351. See **Beach**, 138/266, 75 S. E. 139.

Presumption of, from proof of killing. Qualification of rule, where such proof itself shows circumstances of mitigation. **Perkins**, 124/6, 52 S. E. 17; **Green**, 124/344, 52 S. E. 431; **Mann**, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934.

Purchase of weapon before homicide as showing. **Kimbrell**, 138/414, 75 S. E. 252.

Relevancy of age of person charged with. **Gillis**, 129/403, 409, 58 S. E. 1051.

Shooting at another, malice or deliberation not essential to offense of. **Studstill**, 105/832, 31 S. E. 542.

Silence as tending to show, where circumstances required answer or denial of wife's exclamation. **Nunn**, 143/451, 85 S. E. 346.

Size and physical condition of person killed, relevant on question as to, when. **Wells**, 115/577, 42 S. E. 39.

Source of; time of existence before homicide; rebuttal of presumption of; providing weapons, as circumstance of. **Perry**, 102/366, 30 S. E. 903.

"That lives in the flash of the pistol and the gleam of the blade," subject to misconstruction, as relating to deliberation. **Mills**, 133/155, 65 S. E. 368; **Leonard**, 133/435, 66 S. E. 251.

Threat as tending to show. **Golatt**, 103/18, 60 S. E. 107.

When presumed from shooting, and when not; intent to kill not presumed where death did not ensue. **Adams**, 125/11, 13, 53 S. E. 804. See **Shockley**, 125/778, 54 S. E. 692.

Malicious mischief, by cutting off and destroying a wire fence; evidence suffi-

cient as to possession of fence and land by alleged owner. **Lunsford**, 21 A. 78, 94 S. E. 80.

Conviction of, not authorized by act which put owner of property to expense and annoyance but did not destroy or injure it. **Pollet**, 115/234, 41 S. E. 606.

Conviction warranted by evidence. **Hayes**, 16 A. 335, 85 S. E. 253.

Evidence relevant to defense. **McClurg**, 2 A. 624, 58 S. E. 1064.

Facts not warranting conviction. **Carstarphen**, 112/230, 37 S. E. 423.

Indictment for, not supported by proof that one of the alleged owners of the bridge destroyed claimed an easement therein. **Grant**, 120/199, 47 S. E. 524.

In mutilating posted trespass notice. **Moody**, 127/821, 56 S. E. 993.

Proof of ownership of injured property. **Holder**, 127/51, 56 S. E. 71.

Manslaughter.

Accidental killing of one while shooting at another was voluntary manslaughter, where the killing of the other would have been that offense. **Strickland**, 9 A. 552, 71 S. E. 919.

Sufficient instruction on theory of. **Green**, 18 A. 678, 90 S. E. 284.

Error in not charging jury on theory of. **Darby**, 9 A. 700, 72 S. E. 182. No error in charging that if accused did not intend to kill, but pulled the trigger and fired, the result would not be accident. **Baker**, 12 A. 553, 77 S. E. 884.

Issues as to manslaughter or homicide by misfortune or accident, fairly submitted. **Day**, 133/434, 66 S. E. 250.

Adultery, killing on account of. **O'Shields**, 125/311, 54 S. E. 120.

Arrest, manslaughter by officer attempting. **Cooner**, 16 A. 539, 85 S. E. 688.

Legal, manslaughter not shown by homicide of person undertaking, in lawful manner. **Graham**, 146/18, 90 S. E. 473.

Policeman attempting, homicide of, not shown to be manslaughter of

Manslaughter—(Continued).

either grade. *Johnson*, 130/27, 60 S. E. 160.

Unlawful, manslaughter in resistance of. *Norton*, 137/842, 74 S. E. 759. See *Jenkins*, 3 A. 146, 59 S. E. 435; *Yates*, 127/820, 56 S. E. 1017, 9 Ann. Cas. 620.

Unlawful, when no case of involuntary manslaughter by shooting in resistance of unlawful arrest. *Perdue*, 135/278, 69 S. E. 184.

Without a warrant, on trial for murder by killing policeman in resistance to, where offender escaping, manslaughter not involved. *Brooks*, 114/6, 39 S. E. 877.

Assault, actual, as basis of reduction of homicide. *Nunn*, 143/452, 85 S. E. 346.

On brother, equivalent to assault on self, as a circumstance to justify excitement of passion. *Sheffield*, 16 A. 287, 85 S. E. 253.

With deadly weapon by deceased on accused, in view of evidence as to, law of voluntary manslaughter not involved. *Robinson*, 10 A. 463, 73 S. E. 622.

By deceased, evidence warranted charge on. *Moran*, 120/846, 48 S. E. 324; *Williams*, 120/870, 48 S. E. 368.

Less than felony, manslaughter on sudden heat of passion from, under statement of accused. *Northfoot*, 142/714, 83 S. E. 655.

Manslaughter on attempt to commit serious personal injury by assault and battery. *Lawrence*, 143/264, 84 S. E. 582.

Charge on manslaughter authorized, where there was evidence that immediately before the fatal shot was fired the deceased made a violent assault on the defendant, seizing him by the collar, choking him, and making threats to kill him. *Allen*, 20 A. 184, 92 S. E. 948.

Manslaughter involved, where there was evidence that deceased assaulted defendant and was attempting to draw weapon, when killed. *Cain*, 7 A. 24, 65 S. E. 1069.

Manslaughter—(Continued).

Assault to murder, on trial for, law of voluntary manslaughter applicable, when. *Pollard*, 124/100, 52 S. E. 149.

Facts not requiring court to charge jury on manslaughter, on trial for. *Ferguson*, 17 A. 811, 88 S. E. 589; *Duhart*, 18 A. 287, 89 S. E. 343.

Voluntary manslaughter not charged on, no reversible error, after verdict of stabbing on indictment for assault to murder. *Williams*, 108/748, 32 S. E. 660.

Assignments of error, applicability of law of manslaughter to facts, not shown by. *Scroggs*, 147/737, 95 S. E. 226.

Attack not felonious but sufficient to arouse sudden heat of passion. *Horton*, 120/310, 47 S. E. 969.

Manslaughter by killing retreating assailant, in passion aroused by. *Barney*, 5 A. 301, 63 S. E. 28.

Automobile, involuntary manslaughter in operating. *Hayes*, 11 A. 374, 381, 75 S. E. 52.

Autrefois convict, one who pleaded, alleging that the court illegally refused to accept a verdict of involuntary manslaughter and declared a mistrial, and whose plea was sustained, could not complain that the court thereafter treated the
Darsey, 17 A. 280, 86 S. E. 781.

Beating on head, in case of homicide by, involuntary manslaughter involved. *Kelly*, 145/210, 88 S. E. 822.

Blow, manslaughter by killing from passion engendered by. *Heard*, 114/90, 39 S. E. 906.

Of policeman's club, manslaughter by one killing in heat of passion aroused by. *Brown*, 8 A. 385, 69 S. E. 45.

Bottle, involuntary manslaughter by hastily seizing and hurling. *Farmer*, 112/80, 37 S. E. 120.

Brick, manslaughter by use of. *Watson*, 21 A. 637, 94 S. E. 857.

Charge as to manslaughter. *Barnes*, 113/716, 39 S. E. 488.

Manslaughter—(Continued).

On manslaughter, proper, where there is anything deducible from the evidence or defendant's statement at trial that would tend to show manslaughter or would be sufficient to raise a doubt as to which grade of homicide was committed. *Reeves*, 22 A. 628, 97 S. E. 115; *Griffin*, 18 A. 462, 89 S. E. 537; *Tanner*, 21 A. 189, 94 S. E. 67; *Weldon*, 21 A. 331, 94 S. E. 326.

As to manslaughter not subject to exception taken. *Hightower*, 14 A. 246, 80 S. E. 684; *Duhart*, 14 A. 565, 81 S. E. 813.

As to manslaughter not subject to the exception that it was argumentative or unfairly stressed circumstances which seemed to implicate the accused. *Cox*, 17 A. 727, 88 S. E. 214.

That voluntary manslaughter "may or may not be involved" was not proper, but did not require a new trial. *Mulligan*, 18 A. 465, 469, 89 S. E. 541.

On manslaughter, harmless error in. *Kidd*, 10 A. 149, 75 S. E. 226.

Error in omitting essential element in definition of voluntary manslaughter, that the killing must be unlawful. *Darby*, 16 A. 171, 84 S. E. 724.

Error in, as to contention of defendant in regard to manslaughter. *Freeman*, 5 A. 490, 63 S. E. 530.

That killing under certain circumstances "would" be manslaughter, error, where not necessarily so. *Green*, 7 A. 804, 68 S. E. 318.

Error in, that there must be more than mere walking towards person to reduce homicide to manslaughter. *Ragland*, 111/213, 36 S. E. 682.

Referring to involuntary manslaughter as one of the kinds included in the term manslaughter, not ground for reversal, here. *Tipton*, 8 A. 92, 68 S. E. 614.

That there are two kinds, voluntary and involuntary, not require re-

Manslaughter—(Continued).

versal, though no evidence indicated involuntary manslaughter. *Spurgeon*, 8 A. 117, 68 S. E. 653.

Erroneous, on manslaughter, rendered harmless by finding of involuntary manslaughter. *Chapman*, 120/855, 48 S. E. 350.

As to involuntary manslaughter, harmless, where verdict of manslaughter. *Davis*, 114/107, 39 S. E. 906.

On involuntary manslaughter, no material error. *Warnack*, 7 A. 73, 66 S. E. 393.

Involuntary manslaughter not involved; harmless error where verdict was voluntary manslaughter. *Smith*, 8 A. 680, 70 S. E. 42.

Involuntary, not in issue; court properly omitted instructions as to, *Segar*, 12 A. 685, 78 S. E. 51.

That "the only manslaughter that court . . . thinks applicable to the evidence is voluntary manslaughter," not error. *Propez*, 22 A. 254, 95 S. E. 939.

On manslaughter, when not involved, error. *Jones*, 7 A. 334, 66 S. E. 961.

As to manslaughter, considered. *Yeates*, 129/636, 59 S. E. 771.

Manslaughter not shown by evidence or prisoner's statement on murder trial, not charged on. *Freeman*, 112/48, 37 S. E. 172. *Aliter* where facts warrant such finding. *Chestnut*, 112/367, 37 S. E. 384.

Omission of, on manslaughter, no ground for reversal, where counsel for accused stated on the trial that it was not involved in the case. *Threlkeld*, 128/660, 58 S. E. 49.

One convicted of involuntary manslaughter, not hurt by error in charge to jury on murder. *Goss*, 14 A. 402 81 S. E. 247.

Theory of manslaughter involved by evidence, must be submitted to the jury. *Bell*, 130/865, 61 S. E. 996.

Manslaughter—(Continued).

As to voluntary manslaughter, where not involved, when cause new trial, and when not. *Robinson*, 109, 506, 34 S. E. 1017.

When proper to give in charge Penal Code, § 73. *Goodin*, 126/561, 55 S. E. 503.

On manslaughter, omission of, no ground for arresting judgment. *Spence*, 7 A. 825, 68 S. E. 443.

On manslaughter, omission of, not error, under evidence here. *Clark*, 117/254, 43 S. E. 853; *Jones*, 117/327, 43 S. E. 715.

Omission of, on manslaughter, when not error. *Griffin*, 113/279, 38 S. E. 844; *Baker*, 111/141, 36 S. E. 607; *Gay*, 111/648, 36 S. E. 857.

Omission of, on voluntary manslaughter, not harmful to one convicted of shooting at another. *Espy*, 19 A. 743, 92 S. E. 229.

On voluntary manslaughter, no error in. *Carswell*, 10 A. 27, 72 S. E. 514.

Omission of, on voluntary manslaughter, no ground for reversal, where accused found guilty of involuntary manslaughter. *Harbin*, 127/48, 55 S. E. 1046.

Omission of, on involuntary manslaughter, error here. *Joiner*, 129/295, 58 S. E. 859.

Omission of, as to involuntary manslaughter, when not error. *Thornton*, 107/684, 33 S. E. 673.

Proper, on involuntary manslaughter. *Cobb*, 11 A. 53, 74 S. E. 702.

Proper, on voluntary manslaughter. *Maughon*, 9 A. 568, 71 S. E. 922.

Proper, on manslaughter. *Mixon*, 7 A. 805, 68 S. E. 315; *Jenkins*, 123/523, 51 S. E. 598; *McDuffie*, 121/581, 49 S. E. 708.

On manslaughter authorized by evidence. *Pryer*, 128/29, 57 S. E. 320; *Wall*, 126/549, 55 S. E. 484; *Park*, 126/576, 55 S. E. 489; *Hatcher*, 116/617, 42 S. E. 1018; *Solo-*

Manslaughter—(Continued).

mon, 2 A. 92, 58 S. E. 381; *Curtis*, 2 A. 224, 58 S. E. 291; *White*, 2 A. 412, 58 S. E. 686; *Harris*, 2 A. 487, 58 S. E. 680; *Clark*, 6 A. 741, 65 S. E. 694; *Webb*, 8 A. 430, 69 S. E. 601; *Brown*, 13 A. 370, 79 S. E. 177; *Layton*, 15 A. 416, 83 S. E. 431; *Morgan*, 16 A. 267, 85 S. E. 254; *Booker*, 16 A. 280, 85 S. E. 255; *Jordan*, 16 A. 393, 85 S. E. 455; *Angry*, 17 A. 161, 86 S. E. 403; *Farrar*, 17 A. 768, 88 S. E. 592; *Harris*, 18 A. 752, 90 S. E. 491; *Brinson*, 22 A. 650, 97 S. E. 102.

On voluntary manslaughter, authorized by evidence. *Freeman*, 1 A. 276, 57 S. E. 924; *Hudson*, 101/521, 28 S. E. 1010; *Horton*, 110/740, 35 S. E. 659.

On manslaughter, not authorized by evidence. *Bryant*, 19 A. 144, 91 S. E. 215; *Harrell*, 22 A. 104, 95 S. E. 537; *Lewis*, 16 A. 154, 84 S. E. 609; *Sumner*, 109/142, 34 S. E. 293; *Channell*, 109/150, 34 S. E. 353; *Howard*, 115/245, 41 S. E. 654; *West*, 121/364, 49 S. E. 266; *Coleman*, 121/594, 49 S. E. 716; *Bird*, 128/253, 57 S. E. 320; *Renfree*, 8 A. 676, 70 S. E. 70.

On involuntary manslaughter, authorized by evidence. *Parks*, 105/248, 31 S. E. 580; *Gadsen*, 134/785, 68 S. E. 497.

On involuntary manslaughter, not authorized by evidence. *Carswell*, 10 A. 30, 32, 72 S. E. 602; *Hart*, 14 A. 364, 80 S. E. 909; *Nelms*, 123/575, 51 S. E. 588; *Allen*, 134/380, 67 S. E. 1038; *Brooks*, 134/784, 68 S. E. 504.

On manslaughter, required by evidence. *Hill*, 147/650, 95 S. E. 213; *Drane*, 147/212, 93 S. E. 217; *Goolsby*, 147/259, 93 S. E. 407; *Brown*, 10 A. 50, 72 S. E. 537; *Cain*, 7 A. 805, 68 S. E. 315.

On manslaughter, not required here. *Clements*, 123/547, 51 S. E. 595.

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On voluntary manslaughter, not required by evidence. *Parks*, 105/242, 31 S. E. 580.

On involuntary manslaughter required by evidence. *Raines*, 17 A. 288, 86 S. E. 660.

On involuntary manslaughter, not required by evidence. *Oliver*, 129/777, 59 S. E. 900; *August*, 20 A. 169, 92 S. E. 956; *Conley*, 21 A. 135, 136, 94 S. E. 261; *Burnett*, 22 A. 792, 97 S. E. 203.

Child of accused, homicide by beating, raised no issue of voluntary manslaughter; but involuntary manslaughter in commission of unlawful act. *Ashford*, 144/832, 88 S. E. 205.

Circumstances equivalent to an assault which would reduce homicide to manslaughter, jury's right to determine what were. *Ragland*, 111/215, 36 S. E. 682.

Circumstantial evidence, manslaughter may be shown by; but enough facts of homicide must appear to rebut presumption of malice. *Reed*, 2 A. 153, 58 S. E. 312.

Convict, evidence of homicide by, raised issue of manslaughter. *Westbrook*, 133/578, 66 S. E. 788, 18 Ann. Cas. 295.

Cooling time, whether sufficient, is always a jury question. *McPhearson*, 19 A. 232, 91 S. E. 336; *Mann*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934; *Varnor*, 139/613, 77 S. E. 808; *Nunn*, 143/452, 85 S. E. 346; *Pyle*, 4 A. 819, 62 S. E. 540; *Barney*, 5 A. 302, 63 S. E. 28; *Robinson*, 10 A. 463, 73 S. E. 622; *Booker*, 16 A. 284, 85 S. E. 255; *Morris*, 18 A. 759, 90 S. E. 729; *Williams*, 125/302, 54 S. E. 108. Cooling circumstances. *Id.* 305.

Inaccurate instruction as to. *Bradley*, 128/22, 57 S. E. 237.

Daughter of slayer, treatment of, as provocation for. *McPhearson*, 19 A. 232, 91 S. E. 336.

Definition of manslaughter. *Hayes*, 11 A. 374, 381, 75 S. E. 52.

Manslaughter—(Continued).

Doubt raised as to intent, and lawfulness of act, involuntary manslaughter of both grades, involved. *Warnack*, 3 A. 590, 60 S. E. 288.

Estoppel to obtain reversal for charge on manslaughter, given at request of accused. *Quattlebaum*, 119/433, 46 S. E. 677; *Chatman*, 6 A. 564, 65 S. E. 360. Cf. *Hill*, 147/650, dissent, 652, 95 S. E. 213.

To complain that court charged jury on manslaughter, where requested, not prevent exception to verdict of that offense, on the ground that there was no evidence to authorize it. *Griggs*, 17 A. 305, 86 S. E. 726. Defendant inducing court to charge jury on law of manslaughter was precluded not only from complaining that the court charged on that subject, but also from obtaining a new trial on the ground that the verdict of manslaughter was unauthorized by evidence. *Partee*, 19 A. 753, 756, 92 S. E. 306; *Thompson*, 20 A. 176, 92 S. E. 959.

Evidence, law of manslaughter applicable to reasonable deductions from. *Rivers*, 10 A. 487, 73 S. E. 610.

Theory of voluntary manslaughter reasonably deducible from. *Dunn*, 13 A. 682, 79 S. E. 764.

Theory of manslaughter voluntary, when raised by, and when not. *Turner*, 131/761, 63 S. E. 294; *Taylor*, 131/765, 63 S. E. 296.

Manslaughter involved by one phase of. *Clements*, 140/165, 78 S. E. 716. See *Short*, 140/781, 80 S. E. 8.

Conflicting, required conviction or acquittal; voluntary manslaughter, not in case. *Morgan*, 108/748, 32 S. E. 854.

Manslaughter not for consideration, when no such theory presented by, or by statement of accused. *Merck*, 137/89, 72 S. E. 896; *Hicks*, 126/80, 54 S. E. 807; *Perdue*, 126/113, 54 S. E. 820.

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Theory of manslaughter raised by. Strickland, 133/76, 65 S. E. 148; Smith, 118/61, 44 S. E. 817; Robinson, 118/198, 44 S. E. 985; Greason, 118/808, 45 S. E. 615; Horton, 120/307, 47 S. E. 969; Goodman, 122/111, 49 S. E. 922; Thomas, 122/152, 50 S. E. 64; Pierce, 132/27, 63 S. E. 792; Pressley, 132/65, 63 S. E. 784; Jackson, 132/571, 64 S. E. 656; Jones, 139/104, 76 S. E. 748; Burney, 142/812, 813, 83 S. E. 937; Vernon, 146/709, 92 S. E. 76.

Theory of manslaughter not raised by. Mills, 104/502, 30 S. E. 778; Smith, 106/673, 32 S. E. 851, 71 Am. St. R. 286; Owens, 120/205, 47 S. E. 513; Robinson, 120/311-2, 47 S. E. 968; Smith, 124/213, 52 S. E. 329; Greer, 124/688, 52 S. E. 884; Grant, 124/758, 53 S. E. 334; Garland, 124/832, 53 S. E. 314; Robinson, 129/336, 58 S. E. 842; Dotson, 129/727, 59 S. E. 774; Fallin, 132/37, 63 S. E. 621; Brantley, 132/578, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203; Hall, 133/178, 65 S. E. 400; Allen, 133/260, 65 S. E. 431; Scott, 135/29, 68 S. E. 792; Gale, 135/351, 69 S. E. 537; Robinson, 135/217, 69 S. E. 113; Swain, 135/219, 69 S. E. 170; Cargile, 136/55, 70 S. E. 873; Driscoll, 136/104, 70 S. E. 875; Harris, 136/107, 70 S. E. 952; Fitzgerald, 136/163, 71 S. E. 128; Dotson, 136/243, 71 S. E. 164; Hutchins, 136/246, 71 S. E. 162; Norton, 137/843, 74 S. E. 759; Bruce, 139/594, 77 S. E. 797; Crawford, 139/612, 77 S. E. 811; Miller, 139/716, 723, 78 S. E. 181; Devereaux, 140/225, 78 S. E. 849; Duncan, 141/4, 80 S. E. 317; Chancey, 141/54, 80 S. E. 287; Jackson, 141/213, 80 S. E. 789; Hawkins, 141/212, 80 S. E. 711; Harris, 142/627, 83 S. E. 514; Hickman, 142/630, 83 S. E. 508; Pope, 144/165, 86 S. E. 542; Howard, 144/169, 86 S. E. 540; Williams, 147/

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53, 92 S. E. 864; Griggs, 148/212, 96 S. E. 262; Clark, 7 A. 609, 67 S. E. 697.

Issue of voluntary manslaughter raised by. Mize, 135/292, 69 S. E. 173; Peterson, 146/6, 90 S. E. 282; Underwood, 146/137, 90 S. E. 861. On theory of mutual intent to fight. Copeland, 22 A. 667, 99 S. E. 126.

Issue of voluntary manslaughter not raised by. Smith, 146/36, 90 S. E. 475; Clawson, 146/39, 90 S. E. 955.

Issue of involuntary manslaughter raised by. Boyd, 136/340, 71 S. E. 146.

Issue of involuntary manslaughter, not raised by. Higgs, 145/414, 89 S. E. 361; Anderson, 122/175, 50 S. E. 51; Cullins, 148/17, 95 S. E. 675; Reed, 148/18, 95 S. E. 692; Gibbons, 137/786, 74 S. E. 549.

Warranting conviction of manslaughter. Milam, 108/34, 33 S. E. 818; Thornton, 4 A. 441, 61 S. E. 736; Austin, 6 A. 572, 65 S. E. 358; Chatman, 6 A. 564, 65 S. E. 360; Corbitt, 7 A. 13, 66 S. E. 152; Moore, 7 A. 78, 66 S. E. 377; Edwards, 7 A. 623, 67 S. E. 701; Veal, 7 A. 729, 67 S. E. 1054; Green, 7 A. 803, 68 S. E. 318; Richardson, 8 A. 27, 68 S. E. 518; Stevens, 8 A. 218, 68 S. E. 874; Miliken, 8 A. 481, 69 S. E. 915; Troup, 8 A. 761, 70 S. E. 101; Owens, 11 A. 425, 426, 75 S. E. 519; Wimbish, 12 A. 653, 79 S. E. 744; Taylor, 13 A. 689, 79 S. E. 862; Folsom, 14 A. 245, 80 S. E. 677; Hightower, 14 A. 246, 80 S. E. 684; Carver, 14 A. 267, 80 S. E. 508; Black, 14 A. 534, 81 S. E. 588; Duhart, 14 A. 563, 81 S. E. 813; Anderson, 14 A. 607, 81 S. E. 802; Curry, 14 A. 764, 82 S. E. 307; Mitchell, 16 A. 286, 85 S. E. 261; Sheffield, 16 A. 287, 85 S. E. 253; Buford, 16 A. 502, 85 S. E. 686; Linder, 17 A. 46, 86 S. E. 90; Sinyard, 17 A. 285, 86 S. E. 657; Hood, 17 A. 441, 87 S. E. 710; McKay,

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17 A. 769, 88 S. E. 591; **Crain**, 18 A. 105, 88 S. E. 915; **Evans**, 18 A. 224, 89 S. E. 350; **Morris**, 18 A. 760, 90 S. E. 729; **Childs**, 18 A. 782, 90 S. E. 723; **McPhearson**, 19 A. 232, 91 S. E. 336; **Bowles**, 21 A. 130, 94 S. E. 63; **Smith**, 22 A. 16, 95 S. E. 376; **Darby**, 22 A. 606, 96 S. E. 707; **Moon**, 22 A. 617, 97 S. E. 81; **Shields**, 22 A. 618, 97 S. E. 90; **Bailey**, 22 A. 632, 96 S. E. 1046; **Crone**, 22 A. 636, 97 S. E. 83; **Burnett**, 22 A. 792, 97 S. E. 203; **Cook**, 22 A. 266, 96 S. E. 303. See also the following: **Wooten**, 10 A. 78, 72 S. E. 526; **Langston**, 10 A. 82, 72 S. E. 532; **Rickerson**, 10 A. 464, 73 S. E. 681; **Montgomery**, 10 A. 801, 74 S. E. 285; **Hightower**, 9 A. 234, 70 S. E. 1022; **Smith**, 9 A. 403, 71 S. E. 606; **Philpot**, 9 A. 570, 71 S. E. 876; **Cochran**, 9 A. 825, 72 S. E. 281; **Sugge**, 9 A. 830, 72 S. E. 287; **Ford**, 9 A. 852, 72 S. E. 442; **Knight**, 12 A. 111, 76 S. E. 1047; **Johnson**, 12 A. 493, 77 S. E. 587; **King**, 12 A. 764, 78 S. E. 483; **Battle**, 103/53, 29 S. E. 491.

Not warranting conviction of manslaughter. **Fish**, 3 A. 34, 59 S. E. 192; **Riley**, 3 A. 534, 60 S. E. 274; **Lewis**, 4 A. 219, 60 S. E. 1068; **Hackett**, 108/41, 33 S. E. 842.

Conviction of manslaughter not authorized by, or by statement of accused, which set up justification. **Watts**, 3 A. 606, 60 S. E. 287.

Warranting conviction of involuntary manslaughter. **Sapp**, 17 A. 340, 86 S. E. 823.

Warranting conviction of involuntary manslaughter in commission of unlawful act; proper instructions to jury. **Smith**, 12 A. 13, 76 S. E. 647; **Gray**, 12 A. 634, 77 S. E. 916.

Fears aroused by menaces, threats, etc., Grade of manslaughter limited to that law of manslaughter distinct from homicide under. **Price**, 137/71, 72 S. E. 908; **Futch**, 137/75, 72 S. E. 911; **Adkins**, 137/81, 72 S. E. 897.

Manslaughter—(Continued).

shown by evidence, in submission to jury. **Leonard**, 133/435, 66 S. E. 251.

Judge cannot refuse to receive verdict for lower grade of, when accused does not object, though unwarranted. **Register**, 10 A. 623, 74 S. E. 429.

Conviction of lower grade supported, though some evidence of higher. **Harbin**, 127/48, 55 S. E. 1046.

Error in charge on voluntary manslaughter rendered harmless by finding of lower grade. **Warnack**, 7 A. 74, 66 S. E. 393.

Gun pointed at another without intention to shoot, involuntary manslaughter in commission of unlawful act, by discharge of. **Baker**, 12 A. 553, 77 S. E. 884; **Green**, 22 A. 793, 97 S. E. 201.

Involuntary manslaughter in the commission of an unlawful act (pointing a gun at the deceased); conviction authorized; new trial not required by omission to give in charge code section defining involuntary manslaughter in commission of a lawful act. **Clents**, 18 A. 707, 90 S. E. 373.

Involuntary manslaughter in commission of lawful act, etc.; where accused discharged gun and killed one party in house. **Felder**, 135/220, 69 S. E. 106; **Delk**, 135/315, 69 S. E. 541, 22 Ann. Cas. 105.

Involuntary manslaughter by unintentional discharge of gun recklessly handled. Grade, how determined. **Austin**, 110/748, 36 S. E. 52, 78 Am. St. R. 134.

Moe, on evidence of killing with, conviction of manslaughter authorized. No basis for charge on involuntary manslaughter. **Cox**, 21 A. 238, 241, 94 S. E. 47.

Indictment, no charge in, covering theory of involuntary manslaughter; evidence no basis of conviction. **Jones**, 147/356, 94 S. E. 248.

Manslaughter—(Continued).

For murder, effect of endorsement of "true bill for voluntary manslaughter" on. *Williams*, 13 A. 83. 78 S. E. 854.

Intent to kill, no involuntary manslaughter in case of. *Taylor*, 108/384, 34 S. E. 2.

Justifiable homicide being defense, manslaughter of either grade not involved. *Herrington*, 130/308, 60 S. E. 572; *Dawson*, 130/349, 60 S. E. 851.

Under reasonable fears, manslaughter found against defense of, conviction sustained. *Alexander*, 118/26, 44 S. E. 851.

Defense of, not to be confused with that of manslaughter. *Deal*, 145/33, 88 S. E. 573; *Cargile*, 137/775, 74 S. E. 621; *White*, 147/378, 94 S. E. 222; *Ricketson*, 134/306, 67 S. E. 881.

Killing because of fear of injury less than a felony. Issue raised where accused stated that he was "looking to be shot or killed any moment, or hurt in some way, and that was the only way" he could stop the deceased and save himself. *Dunwoody*, 23 A. 93, 97 S. E. 561.

Lawful act, involuntary manslaughter in commission of, not applicable on facts. *Washington*, 137/218, 73 S. E. 512.

Involuntary manslaughter, in commission of, under one phase of testimony. *Ray*, 127/52, 55 S. E. 1046.

Verdict of involuntary manslaughter in the commission of, not showing that it was done without due caution and circumspection, not good. *Overby*, 115/240, 41 S. E. 609.

Limitation applicable to indictments for manslaughter, no bar to conviction of manslaughter under indictment for murder. *Sikes*, 20 A. 80, 92 S. E. 553.

Malice, conviction of manslaughter not set aside for error in charging jury on. *Williams*, 12 A. 337, 77 S. E. 189.

Manslaughter—(Continued).

Express or implied, reduction of homicide to manslaughter implies absence of. *Butler*, 142/286, 82 S. E. 654.

Misadventure, homicide by, distinct from involuntary manslaughter. *Roberts*, 138/815, 76 S. E. 361.

Mistress of slayer, law of manslaughter not applied to killing of, for her recent lewd acts with other men. *Cyrus*, 102/616, 29 S. E. 917.

Moral turpitude, voluntary manslaughter involves. *Holloway*, 126/459, 53 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. R. 102, 7 Ann. Cas. 1164.

Murder, manslaughter embraced in charge of. *Williams*, 13 A. 84, 85. 78 S. E. 854; *Davis*, 14 A. 764, 82 S. E. 297. No error in instructing jury that indictment charged murder and manslaughter. *Ib.*

Verdict of, set aside, manslaughter being the highest offense shown by the evidence. *Shaw*, 114/448, 40 S. E. 242.

On trial for, evidence raised theory of manslaughter. *Andrews*, 134/71, 67 S. E. 422; *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Law of voluntary manslaughter, when applicable on trial for. *Green*, 124/344, 52 S. E. 431; *Tanner*, 145/71, 88 S. E. 554.

Voluntary manslaughter, where not involved on trial for. *Caesar*, 127/711, 57 S. E. 66.

Error in charging jury on, immaterial, where verdict was manslaughter. *Deal*, 18 A. 70, 88 S. E. 902; *Griggs*, 17 A. 302, 86 S. E. 726; *Faison*, 13 A. 181, 79 S. E. 39; *Franklin*, 15 A. 349, 83 S. E. 196;

Uncontradicted evidence authorizing verdict for, conviction of manslaughter not disturbed. *Lewis*, 17 A. 195, 86 S. E. 413. No ground for complaint that jury found manslaughter when they might have found murder. *Lee*, 2 A. 481, 58 S.

Manslaughter—(Continued).

E. 676; *Harris*, 2 A. 491, 58 S. E. 680; *Spence*, 7 A. 825, 68 S. E. 443.

Instruction as to voluntary manslaughter, no cause for new trial to one convicted thereof, under indictment for murder, evidence making case of murder. *Carver*, 105/461, 30 S. E. 433; *Bullard*, 105/462, 30 S. E. 433. Nor where conviction of murder. *Joiner*, 105/647, 31 S. E. 556.

In case of conviction of, error harmless in charge of court as to manslaughter. *Joiner*, 129/295, 58 S. E. 859.

Charge to jury on manslaughter not authorized, where the evidence made a case of either murder or justifiable homicide. *Lewis*, 16 A. 154, 84 S. E. 609; *James*, 123/548, 51 S. E. 577. Verdict of manslaughter set aside. *Talbirt*, 119/970, 47 S. E. 544; *Maughon*, 7 A. 660, 67 S. E. 842.

No other verdict than murder or not guilty authorized by evidence or defendant's statement, conviction of manslaughter set aside. *Griggs*, 17 A. 305, 86 S. E. 726; *Royals*, 17 A. 833, 88 S. E. 714; *Hunnicut*, 114/448, 40 S. E. 243; *James*, 123/548, 51 S. E. 577.

Charge to jury as to involuntary manslaughter, and verdict, required new trial, where the evidence made a case of murder or of voluntary manslaughter. *Jordan*, 117/406, 43 S. E. 747.

Submission of law as to, in case of killing with a billy. *McDonald*, 23 A. 59, 97 S. E. 448.

Manslaughter of either grade not here involved, evidence raising issue of murder or of justifiable homicide. *Worley*, 138/336, 75 S. E. 240; *Berry*, 122/429, 50 S. E. 345; *McBeth*, 122/737, 50 S. E. 931. See *Washington*, 136/66, 70 S. E. 797; *Richards*, 136/67, 70 S. E. 868.

Manslaughter of either grade not involved, evidence showing murder,

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and statement of accused suggesting accidental killing. *Golatt*, 130/18, 20, 60 S. E. 107; *Toomer*, 130/63, 60 S. E. 198; *Lyles*, 130/294, 60 S. E. 578.

Where no suggestion of sudden passion, and where accused guilty of murder or justifiable, manslaughter not involved. *Pugh*, 114/16, 39 S. E. 875; *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Manslaughter not legally found on evidence making issue of murder or justification. *Reed*, 2 A. 153, 58 S. E. 312; *Reeves*, 2 A. 414, 58 S. E. 548; *Lightsy*, 2 A. 442, 58 S. E. 686; *Lee*, 2 A. 481, 58 S. E. 676; *Bates*, 4 A. 492, 61 S. E. 888; *Brantley*, 5 A. 458, 63 S. E. 519; *Branch*, 5 A. 651, 63 S. E. 714; *Platt*, 12 A. 536, 77 S. E. 831; *Killebrew*, 12 A. 725, 78 S. E. 205; *Amos*, 14 A. 590, 81 S. E. 903; *Futch*, 16 A. 692, 85 S. E. 972.

Mutual combat, killing in. *Davis*, 114/106, 39 S. E. 906.

As related to manslaughter. *Findley*, 125/579, 583, 54 S. E. 106; *Williams*, 125/302, 54 S. E. 108.

Mutual blows not necessary to make. *Hollis*, 17 A. 77, 86 S. E. 95.

Case for charge to jury on. *Land*, 11 A. 761, 76 S. E. 78; *Garner*, 6 A. 789, 65 S. E. 842.

Doctrine of, not applicable where there is no other provocation than words, threats, menaces, or contemptuous gestures. *Bird*, 128/253, 57 S. E. 320.

Evidence warranting charge on theory of. *Moss*, 126/542, 55 S. E. 481; *Goodin*, 126/561, 55 S. E. 503; *Park*, 126/576, 55 S. E. 489.

Where shown, manslaughter involved. *Kimball*, 112/541, 37 S. E. 886.

Statement of accused tended to show. *Matthews*, 136/125, 70 S. E. 1110.

With deadly weapon, resulting from sudden passion and willingness

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to fight, manslaughter in. *Hart*, 135/356, 69 S. E. 530.

Invitation to, when implied from putting hand on pistol, and abusive language, and attitude. *Booker*, 16 A. 283, 284, 85 S. E. 255.

Not for consideration without evidence of it. *Coggin*, 147/53, 92 S. E. 882.

Not implied by the word "reencounter." *Mulligan*, 18 A. 470, 89 S. E. 541.

Where no evidence of, or of sudden passion, from assault, etc., manslaughter not involved. *Howard*, 2 A. 830, 59 S. E. 89.

Voluntary manslaughter. Question of sufficient interval for cooling time, for jury. *Williams*, 130/405, 406, 60 S. E. 1053.

Manslaughter shown by evidence. On mutual fight accused shot at one and killed another. *Sapp*, 2 A. 449, 58 S. E. 667. Sudden quarrel and mutual combat. *Harris*, 2 A. 487, 58 S. E. 680.

Facts raised theory of manslaughter from mutual combat and intent to fight. *Higgs*, 148/136, 95 S. E. 994. See catchwords, *Mutual Combat*.

Mutual intent to fight, inference of, authorized by circumstances. *Layton*, 15 A. 418, 83 S. E. 431.

Circumstances indicating, and authorizing charge of court on voluntary manslaughter. *Starr*, 18 A. 145, 88 S. E. 918; *Lee*, 18 A. 717, 90 S. E. 371.

Evidence as to, authorized court to charge on manslaughter. *Smith*, 10 A. 840, 74 S. E. 447; *Wright*, 16 A. 572, 85 S. E. 823; *Franklin*, 15 A. 349, 83 S. E. 196; *Faison*, 13 A. 180, 79 S. E. 39.

If there is any evidence that tends to show, charge should give law of manslaughter. *Mulligan*, 18 A. 467, 89 S. E. 541; *Cash*, 18 A. 486, 89 S. E. 603; *Trammell*, 18 A. 487, 89 S. E. 606.

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Conviction authorized by evidence as to. *Hill*, 17 A. 295, 86 S. E. 657; *Mincey*, 17 A. 337, 86 S. E. 783.

Negligence criminal, manslaughter as result of; conviction set aside, where deceased had been warned of danger and was wanting in due care. *Carbo*, 4 A. 583, 62 S. E. 140.

Culpable, killing by, not accident. *Baker*, 12 A. 554, 77 S. E. 884.

In commission of act not in itself unlawful, manslaughter by; as struggle to take knife. *Flannigan*, 136/132, 70 S. E. 1107.

"Other equivalent circumstances" sufficient to reduce grade of homicide; definition of. *Thurman*, 14 A. 543, 81 S. E. 796.

Meaning and scope of. *Battle*, 133/182, 65 S. E. 382.

What are; to what extent a question for the jury alone. *Findley*, 125/579, 54 S. E. 106.

Proper charge as to. *Land*, 11 A. 761, 76 S. E. 78.

Words are not. *Stevens*, 137/520, 73 S. E. 737, 38 L. R. A. (N. S.) 99.

Where no assault on slayer or attempt to commit bodily injury on him. *Rumsey*, 126/420, 423, 55 S. E. 167.

Passion on part of slayer is an essential element of voluntary manslaughter; passion on part of person slain had no bearing on the grade of homicide here. *Rentfrow*, 123/539, 51 S. E. 596.

Manslaughter in heat of, without malice, distinct from justifiable homicide. *Worley*, 136/231, 234, 71 S. E. 153.

Manslaughter by homicide in, upon discovery of debaucher. *Mize*, 135/298, 69 S. E. 173. See *Swain*, 135/219, 69 S. E. 170.

Immaterial who provoked homicide committed in sudden heat of, or whether the passion was justifiably aroused. *Anderson*, 14 A. 607, 81 S. E. 802.

Manslaughter—(Continued).

Conviction of, not unlawful if any theory of the evidence authorizes inference that the killing resulted from sudden heat of, pending fight or aroused by assault, and without malice aforethought. *Tanner*, 21 A. 192, 94 S. E. 67.

Case of manslaughter, not made by killing in, where facts justify the killing. *Branch*, 5 A. 652, 63 S. E. 714.

No theory of voluntary manslaughter without evidence of circumstances to excite passion. *Kelly*, 145/210, 88 S. E. 822.

Pistol, involuntary manslaughter by one unintentionally aiming, and snapping it. *Irvin*, 9 A. 865, 72 S. E. 440. See *Berry*, 9 A. 868, 72 S. E. 433.

Premeditated homicide, manslaughter or question of cooling time, not applicable to. *Perry*, 102/367, 30 S. E. 903.

Previous difficulty, proper instruction as to. *Spurgeon*, 8 A. 117, 68 S. E. 653.

Principal in second degree of voluntary manslaughter. *Pope*, 13 A. 711, 713, 79 S. E. 909.

Provocation by going to slayer's house late at night and persisting in attempt to see woman; admissibility of evidence as to her unchaste character, etc. *Rumsey*, 126/420, 55 S. E. 167.

By one pointing pistol which he was prevented from using, basis for verdict of. *Barrett*, 14 A. 807, 82 S. E. 371.

Insufficient to reduce homicide to manslaughter. *Ferguson*, 128/27, 57 S. E. 101; *Pryer*, 128/29, 57 S. E. 93; *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 354; *Bird*, 128/253, 57 S. E. 320.

By threats, menaces, etc., not amounting to assault, insufficient. *Brantley*, 5 A. 458, 63 S. E. 519.

Conflict of decisions as to

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what additional instructions are required where the court has given language of code on sufficiency of "provocation by words, threats," etc., and it is contended that the slayer acted under fears caused by threats, etc. *Deal*, 18 A. 70, 88 S. E. 902. See *Mulling*, 18 A. 205, 89 S. E. 221; *Mason*, 18 A. 224, 89 S. E. 185; *Hill*, 18 A. 259, 89 S. E. 351; *Mulligan*, 18 A. 465, 471, 89 S. E. 541; *Harris*, 18 A. 752, 90 S. E. 491.

Punishment of manslaughter, no error in omitting instruction as to. *Hart*, 14 A. 365, 80 S. E. 909.

Quarrel, manslaughter by shooting another in, when he approached with hand in pocket. *Young*, 10 A. 116, 71 S. E. 935.

Conviction of manslaughter warranted by evidence as to, leading up to mutual combat with deadly weapons. *Giles*, 126/549, 55 S. E. 405.

Manslaughter in quarrel when slayer found deceased, for whom he was hunting to obtain apology for insult. *Pyle*, 4 A. 818, 62 S. E. 540.

Recommendation to mercy, court not required to charge an effect of, in verdict of manslaughter. *Lewis*, 129/731, 59 S. E. 782.

No error in charge to jury as to. *Odum*, 13 A. 687, 79 S. E. 858.

Rifle, involuntary manslaughter by reckless handling of. *Roberts*, 112/542, 37 S. E. 879.

Rock, involuntary manslaughter by throwing, at fleeing woman. *Jordan*, 124/780, 53 S. E. 331.

Involuntary manslaughter involved by testimony on trial for murder by throwing. *Scruchens*, 146/189, 91 S. E. 25.

Self-defense, error to commingle law of manslaughter with. *Mills*, 133/155, 65 S. E. 368.

"**Serious personal injury**," erroneous definition of. *Smarrs*, 131/22, 61 S. E. 914.

Manslaughter—(Continued).

Sexual act, manslaughter on finding man with slayer's wife or daughter, in such circumstances as to indicate. *Patterson*, 134/264, 67 S. E. 816.

Shooting one of several persons stealing melons, manslaughter by. *Jordan*, 135/434, 69 S. E. 562.

Involuntary manslaughter by shooting pistol in direction of persons at night, without intent to shoot any one. *Nolly*, 124/10, 52 S. E. 19; *Cf. Smith*, 124/214, 52 S. E. 329.

Case of involuntary manslaughter not made by unintentional killing, where caused by shooting gun intentionally at person killed. *Smith*, 8 A. 682, 70 S. E. 42.

Involuntary manslaughter, no theory of, arose in case of intentional shooting. *Clements*, 141/667, 81 S. E. 1117; *Jones*, 141/671, 81 S. E. 1110.

Involuntary manslaughter, no theory of, from statement of accused on trial, that he shot with intent to wound. *Norton*, 137/842, 74 S. E. 759.

Issue of manslaughter not raised by evidence of shooting by aggressor and throwing of decedent from car. *Jones*, 147/356, 94 S. E. 248.

Law of manslaughter charged where accused shot at one and killed another. *Charlton*, 106/400, 32 S. E. 347.

Sister, homicide on account of charges made against, not manslaughter. *Renfro*, 8 A. 676, 70 S. E. 70.

Size of deceased, evidence as to, admissible, when. *Wells*, 115/577, 42 S. E. 39.

Stabbing with pocket-knife, voluntary manslaughter committed by, where parties suddenly fell out, drew knives, and fought. *Johnson*, 4 A. 59, 60 S. E. 813.

Statement of accused authorized instructions on voluntary manslaughter, though he said that he killed in self-defense. *Batchelor*, 18 A. 756, 90 S. E. 487.

Manslaughter—(Continued).

Presenting theory of manslaughter, charge thereon not improper. *Grimes*, 132/754, 51 S. E. 721.

Making case of self-defense, error to charge jury on manslaughter, where State's evidence made case of murder and defendant introduced no evidence. *Grubbs*, 13 A. 31, 78 S. E. 775.

Authorizing acquittal, and evidence demanding verdict of murder, conviction of manslaughter set aside. *Herrington*, 125/745, 54 S. E. 748; *Lester*, 125/747, 54 S. E. 749; *Davis*, 125/299, 54 S. E. 126.

Charge on manslaughter based on part of, authorized. *Smallwood*, 17 A. 516.

Showing innocence, and State's evidence making case of murder, error to charge on manslaughter. *Heygood*, 12 A. 566, 77 S. E. 886; *Ponder*, 10 A. 834, 74 S. E. 439.

Showing misfortune or accident, and evidence showing murder, conviction of involuntary manslaughter not sustained. *Robinson*, 124/787, 53 S. E. 99.

Did not present theory of involuntary manslaughter in commission of lawful act. *Whitfield*, 135/248, 69 S. E. 114.

Did not require presenting theory of involuntary manslaughter to jury. *Goodwin*, 148/33, 95 S. E. 674.

Theory raised solely by. *Coak*, 134/348, 67 S. E. 812; *Allen*, 134/380, 67 S. E. 1038.

Manslaughter theory presented by, but not by evidence, court need not charge on without proper request. *Johnson*, 4 A. 59, S. E. 813; *McLaughlin*, 141/132, 80 S. E. 631; *Hawkins*, 141/212, 80 S. E. 711.

Theory of involuntary manslaughter based solely on, no error in not charging jury as to, in absence of request. *Mulling*, 18 A. 205, 89 S. E. 221; *Lott*, 18 A. 747, 90 S. E. 727; *Green*, 22 A. 793, 97 S. E. 201.

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Phase of involuntary manslaughter presented by, in connection with circumstances. *Nathan*, 131/48, 61 S. E. 994.

Issue of manslaughter presented by, in connection with testimony. *Smith*, 147/682, 95 S. E. 223.

Involuntary manslaughter required by, charge that he relied on defense of misfortune or accident (which his evidence tended to prove), held error. *Richards*, 114/834, 40 S. E. 1001.

Theory of manslaughter not presented by. *Brown*, 144/216, 86 S. E. 661.

Striking woman with ax, where accused confessed, saying he did not intend to kill her, manslaughter not involved. *Price*, 114/856, 40 S. E. 1015.

On head, manslaughter by. *Jackson*, 21 A. 123, 94 S. E. 75.

With stick, involuntary manslaughter by. *Green*, 18 A. 678, 90 S. E. 284.

With stick, homicide by; issue of voluntary or involuntary manslaughter. *Dorsey*, 2 A. 228, 58 S. E. 477.

Involuntary manslaughter under contention of accused, that he hastily caught up stick and struck without intent to kill. *Anderson*, 130/364, 60 S. E. 863.

Manslaughter voluntary, or involuntary, by killing with piece of wood hastily seized when deceased threatened and jumped at defendant. *Taylor*, 108/384, 34 S. E. 2.

Proper instructions as to manslaughter, on theory that deceased struck defendant with fist, and on theory that brass knucks were used by deceased. *Tanner*, 21 A. 189, 192, 94 S. E. 67.

Tenant killing landlord, on trial of, voluntary manslaughter was not involved. *Boone*, 145/37, 88 S. E. 558.

Threat and assault, evidence of, raising theory of manslaughter. *Tillman*, 136/59, 70 S. E. 876.

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Trespass on property, when killing to prevent, is not voluntary manslaughter. *Parks*, 105/247, 31 S. E. 580.
See *Jordan*, 135/434, 69 S. E. 562.

Unlawful act, involuntary manslaughter in commission of; evidence requiring charge. *Dorsey*, 126/633, 55 S. E. 479.

Involuntary manslaughter in commission of; finding authorized by evidence. *Chapman*, 120/855, 48 S. E. 350.

Involuntary manslaughter in commission of. Punishment not reducible to that of misdemeanor, by recommendation of jury. *Hayes*, 11 A. 372, 75 S. E. 52.

Involuntary manslaughter in commission of, may be committed by act merely *malum prohibitum*. *Silver*, 13 A. 722, 79 S. E. 919.

Verdict "involuntary manslaughter," evidence and charge of court not consulted to ascertain meaning. *English*, 105/516, 31 S. E. 448.

Of "involuntary manslaughter," means the higher grade. *Register*, 10 A. 623, 74 S. E. 429. Judge can not refuse to receive verdict for lower grade, to which the accused does not object, though unwarranted. See *s. c.* 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142.

Of "manslaughter" is in effect, verdict of voluntary manslaughter. *Smith*, 109/479, 35 S. E. 59.

Describing offense as "voluntary" manslaughter, not vacated on motion made after affirmance of judgment overruling motion for new trial. *Lott*, 19 A. 450, 91 S. E. 877.

Manslaughter found on indictment for murder, though not submitted to jury, and without evidence; right of court to reject verdict and retire jury for further deliberation. *Dorsey*, 136/502, 71 S. E. 661.

Weapon likely to produce death, absence of evidence that the instrument used in the homicide was, no ground for setting aside conviction

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of involuntary manslaughter. *Raines*, 17 A. 288, 86 S. E. 660.

Not result from use of deadly weapon with intent to wound or cripple only. *Stevall*, 106/444, 32 S. E. 586.

Involuntary manslaughter not committed by unintentional killing in commission of unlawful act with weapon. *Gillis*, 8 A. 700, 70 S. E. 53.

Charge that killing would be manslaughter, if weapon was not deadly, error, in excluding defense of justifiable homicide. *Cress*, 126/564, 55 S. E. 491.

Effect of failure to show knife used by deceased was a deadly weapon. *Smith*, 23 A. 77, 97 S. E. 454.

Wife, manslaughter by killing in passion aroused by assault on. *Barney*, 5 A. 301, 63 S. E. 28.

On trial for killing, voluntary manslaughter, not involved. *Lindsey*, 145/10, 88 S. E. 202.

Uxoricide not manslaughter because of wife's confession of adultery and of intention to repeat it. *Stevens*, 137/520, 73 S. E. 737, 38 L. R. A. (N. S.) 99.

Manslaughter by slaying wife found in company of paramour. *Jackson*, 135/684, 70 S. E. 245.

Conviction authorized by evidence as to killing in passion on discovering wife in act of adultery. *August*, 20 A. 168, 92 S. E. 956.

Erroneous instruction to jury as to manslaughter in case of one killing intruder making indecent proposals to wife. *Rossi*, 7 A. 732, 68 S. E. 56.

Homicide under sudden passion aroused by words and attempted indecent exposure of person to wife of accused. *Jackson*, 132/570, 64 S. E. 656.

Words, threats, menaces, or contemptuous gestures, murder not reduced to manslaughter by passion provoked by. *Ellison*, 137/194, 73 S. E. 255; *Holland*, 3 A. 466, 60 S. E. 331. See *Warnack*, 3 A. 597, 60 S. E. 288. V. II—18.

Marking animal, or changing mark. *Lawrence*, 10 A. 786, 74 S. E. 300.

Medical attention not supplied, a criminal act, when. *Glawson*, 9 A. 458, 71 S. E. 747.

Medical practitioner, defined; law as to registration by, not applied to one professing to heal without medicine, but manually and by supernatural agency. *Bennett*, 4 A. 293, 61 S. E. 546.

Not registered; evidence sufficient to convict. *Hathaway*, 14 A. 415, 81 S. E. 260. Burden on State to prove residence; circumstances making prima facie proof of residence. Facts sufficient for compensation. *Ib.*

Prescribing drugs unlawfully; admissibility of other transactions. *Lee*, 8 A. 413, 69 S. E. 310.

Medicine, unlawful sale of. *Oppenheim*, 12 A. 481, 77 S. E. 652.

Minor, conviction of father of, on evidence authorizing conclusion that he authorized sale by. *Head*, 17 A. 479, 87 S. E. 689.

Furnishing liquor to. *Southern Express Co.*, 1 A. 700, 58 S. E. 67; *Newsome*, 1 A. 790, 58 S. E. 71; *Smith*, 17 A. 118, 86 S. E. 283.

Conviction of furnishing liquor to. *Shropshire*, 15 A. 345, 83 S. E. 152; *Butts*, 15 A. 435, 83 S. E. 681.

Furnishing liquor to; effect of mistake as to age; intoxicating quality shown by effect of two quarts. *Askew*, 4 A. 446, 61 S. E. 737.

Sale of liquor to; burden on accused to show written authority from parent or guardian. *Graham*, 121/590, 49 S. E. 678.

Sale of non-intoxicating malt liquor to, unlawful. *Hardy*, 10 A. 47, 72 S. E. 513.

May be convicted of cheating, or fraudulent practice, though not civilly liable on contract. *Vinson*, 124/19, 52 S. E. 79; *Williams*, 124/136, 52 S. E. 156. Not criminally liable, if under ten years old. If over ten and under four-

teen may be; but burden is on State to show his capacity. *Singleton*, 124/136, 52 S. E. 156.

Furnishing pistol to; whether so-called toy pistol was a pistol was a question for the jury, not the court, here. *Mathews*, 5 A. 336, 63 S. E. 250.

Doubtful whether law as to vagrancy applies to. *Teasley*, 109/282, 34 S. E. 577.

Not convicted of vagrancy, under act of 1905, if under sixteen years old. *Johnson*, 124/421, 52 S. E. 737.

What necessary to convict of vagrancy. *Rogers*, 4 A. 392, 61 S. E. 496.

Valid prohibitions of dealings with minors. *Shurman*, 148/15, 95 S. E. 698.

Permitting minors, to play pool, code amendment as to, constitutional. *Hart*, 113/940, 39 S. E. 304.

Wards of the police power of the State, minors are; policy as to protection of, from evil conduct or formation of vicious habits. *Glenn*, 10 A. 128, 72 S. E. 927.

See catchword, *Cigarettes*.

Misrepresentations in horse-swap, not authorizing conviction. *McLendon*, 16 A. 262, 85 S. E. 200.

Morphine, unlawful sale of. *Oppenheim*, 12 A. 481, 77 S. E. 652.

Murder.

Accident or misfortune, conviction of uxoricide as against defense of. *Josey*, 137/769, 74 S. E. 282.

Homicide by, as defense of murder. *Roberts*, 138/815, 76 S. E. 361.

Shooting by, with rifle, as defense to charge of murder. *Carr*, 106/738, 32 S. E. 844.

Act naturally tending to destroy life, murder by. *Josey*, 137/769, 74 S. E. 282.

Aiding and abetting slayer, murder by. *Futch*, 137/75, 72 S. E. 911.

Charge of court as to, proper. *Goodin*, 126/560, 55 S. E. 503.

Murder—(Continued).

One so doing may be charged as joint principal; he may be convicted after acquittal of actual slayer. *Maughon*, 9 A. 559, 71 S. E. 922. Whether he may be convicted as principal in second degree. *Ib.* 567. See catchword "Homicide," *supra*.

Presence and participation, when not make one guilty of. *Brooks*, 128/261, 57 S. E. 483, 12 L. R. A. (N. S.) 889.

Application of law to facts, for jury. *Wall*, 112/336, 37 S. E. 371.

Arrest without a warrant, murder by killing policeman in resistance to, where offender is escaping. *Brooks*, 114/6, 39 S. E. 877.

For felony, murder in resistance of. *Williams*, 148/310, 96 S. E. 385.

Legal, murder by killing person undertaking to effect, in lawful manner. *Graham*, 146/18, 90 S. E. 473.

Illegal, killing to prevent, is not generally murder. *Jenkins*, 3 A. 146, 59 S. E. 435.

Murder by killing one attempting. *Harris*, 119/116, 45 S. E. 973.

Murder by slaying officer attempting to make. *Johnson*, 130/27, 60 S. E. 160.

Murder in escaping from. *Middlebrooks*, 118/773, 45 S. E. 607.

Assassination, murder by; conviction supported. *Jones*, 130/274, 60 S. E. 840; *Moore*, 130/322, 60 S. E. 544; *Burley*, 130/343, 60 S. E. 1006.

Murder by, issue of identity of accused with slayer. *Taylor*, 135/622, 70 S. E. 237.

Of arresting officer, murder by. *Thompson*, 147/745, 95 S. E. 292.

Assault, simultaneous on deceased and companion, by father of accused, admissibility of evidence as to. *Smith*, 126/804, 55 S. E. 1024.

Murder, where death resulted from fall into ditch, in trying to escape felonious assault with brickbat, or the fall was caused by being struck by it. *Thornton*, 107/33 S. E. 673.

Murder—(Continued).

Assault to murder, phases of law touching murder, in discussing finding of. **Smith**, 127/262, 56 S. E. 360.

Burning with inflammable liquid; conviction of murder authorized. **Walker**, 137/398, 73 S. E. 368.

Cases of murder. **Patterson**, 134/264, 67 S. E. 816; **Ricketson**, 134/306, 67 S. E. 881; **Cook**, 134/347, 67 S. E. 812; **Allen**, 134/380, 67 S. E. 1038; **McCray**, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; **Brooks**, 134/784, 68 S. E. 504; **Gadsden**, 134/785, 68 S. E. 497; **Cason**, 134/786, 68 S. E. 554.

Character of deceased for peaceableness, or for violence. **Powell**, 101/11, 29 S. E. 309, 65 Am. St. R. 277.

Charge of court in effect excluding in one part the defense of justifiable homicide, though giving law thereon in another part, required new trial. **Cress**, 126/564, 55 S. E. 491.

That accused could not create an emergency that made it necessary for another to defend himself, and then take advantage of that person's effort to do so, proper. **Pryer**, 128/28, 57 S. E. 93.

Not subject to the exceptions taken. **Mann**, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934; **Tolbirt**, 124/768, 53 S. E. 327. Charge error in stating contention of accused. **Garland**, 124/834, 53 S. E. 314.

Upon insufficient provocation for homicide, when not error. **Goodman**, 122/111, 49 S. E. 922.

That murder is the only grade of homicide involved in the case, when not error. **Sanders**, 113/267, 38 S. E. 841.

That evidence made case of murder or no crime, when not error. **Dotson**, 129/727, 59 S. E. 774.

Killing at night one coming to the slayer's door and not attempting injury, after difficulty in the morning; charge of court on these facts, considered. **Dotson**, 129/729, 59 S. E. 774.

Murder—(Continued).

On trial of one of defendants jointly indicted, that if he "alone or with others" killed, etc., he would be guilty. **Cochran**, 113/737, 39 S. E. 337.

Error in, as to burden on accused to show death was not caused by wound inflicted by him. **Daniel**, 126/541, 55 S. E. 472.

Child, murder by beating to death with rope. **Ashford**, 144/832, 88 S. E. 205.

Infant male, murder of, alleged, failure to prove sex as laid is cause for new trial. **Holden**, 144/338, 87 S. E. 27.

Choking and strangling, etc., murder by; smothering not included. **Lanier**, 141/17, 80 S. E. 5. Conviction affirmed. **Frank**, 141/243, 80 S. E. 1016. Murder by choking, beating, and drowning, allegation not demurrable. Admissibility of evidence. **Walker**, 141/525, 81 S. E. 442.

Circumstantial evidence of murder. **Weaver**, 135/317, 69 S. E. 488; **Widincamp**, 135/323, 69 S. E. 535. Insufficient to warrant conviction. **Young**, 121/334, 49 S. E. 256; **Park**, 123/164, 51 S. E. 317; **Williams**, 123/278, 51 S. E. 344; **Williams**, 113/721, 39 S. E. 487; **Bailey**, 104/530, 30 S. E. 817; Sufficient to warrant conviction. **Fuller**, 109/815, 35 S. E. 898; **White**, 125/256, 54 S. E. 188; (poisoning by carbolic acid) **Green**, 125/742, 54 S. E. 724; **Hargrove**, 125/270, 54 S. E. 164; **Jones**, 125/307, 54 S. E. 122; **Williams**, 123/138, 51 S. E. 322; (poisoning case) **Roberts**, 123/148, 51 S. E. 374; **Whipple**, 123/579, 51 S. E. 590; **Jones**, 117/710, 712, 44 S. E. 877; **Elliett**, 138/24, 74 S. E. 691; **Davis**, 122/564, 50 S. E. 376.

Of shooting, etc. **Knight**, 148/40, 95 S. E. 679.

Not sufficient to exclude every other reasonable hypothesis than that of guilt, conviction set aside. **Shigg**, 115/212, 41 S. E. 694.

Murder—(Continued).

Command of another standing by, murder by. *Patterson*, 124/4, 408, 52 S. E. 77, 534; *Milner*, 124/86, 52 S. E. 302.

Common design, murder in pursuance of. *Reeves*, 135/311, 69 S. E. 536; See *Baynes*, 135/219, 69 S. E. 170.

Concubine faithless, murder of, sound charge as to. *Calvin*, 118/77, 44 S. E. 848.

Conspiracy and joint participation in murder, evidence of correspondence of tracks bore upon. *Thomas*, 143/268, 84 S. E. 587.

Not alleged in indictment, but instruction thereon warranted. *Bradley*, 128/21, 57 S. E. 237.

Evidence warranting instruction on. *Crawford*, 125/793, 54 S. E. 695.

Murder resulting from, proved. *Smith*, 148/332, 96 S. E. 632.

Between persons shooting at another, not shown, conviction of murder not warranted as to one whose shot was not shown to have struck deceased. *McLeroy*, 125/243, 54 S. E. 125.

Evidence of, and concert of action on trial for murder. *Walker*, 136/126, 70 S. E. 1016; *Huff*, 104/521, 30 S. E. 808.

To commit murder, law of. *Stallings*, 136/131, 70 S. E. 1015.

Admissibility of evidence, and charge to jury, where accused tried separately. *Coleman*, 141/731, 737, 82 S. E. 227, 228.

Evidence showing. *Jones*, 130/274, 60 S. E. 840.

Murder resulting from, followed by shooting and striking. *Kettles*, 145/7, 88 S. E. 197.

To rob, murder in. *Weaver*, 135/317, 69 S. E. 488.

Convict, murder of guard by; evidence supported conviction. *Perry*, 110/234, 36 S. E. 781.

Convictions of murder. *Threlkeld*, 128/660, 58 S. E. 49; *Glover*, 128/1, 57 S. E. 101; *McLeod*, 128/17, 57 S. E.

Murder—(Continued).

83; *Hughes*, 128/19, 57 S. E. 236; *Bradley*, 128/20, 57 S. E. 237; *Jones*, 128/23, 57 S. E. 313; *Hanley*, 128/24, 57 S. E. 236; *McMillan*, 128/25, 57 S. E. 309; *Horton*, 128/26, 57 S. E. 224; *Pryer*, 128/28, 57 S. E. 93; *Crawford*, 128/30, 57 S. E. 94; *Allen*, 128/53, 57 S. E. 224; *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364; *Johnson*, 128/71, 57 S. E. 84; *Bird*, 128/253, 57 S. E. 320; *Robinson*, 128/254, 57 S. E. 315; *Brooks*, 128/261, 57 S. E. 483, 12 L. R. A. (N. S.) 889; *Nick*, 128/573, 58 S. E. 48; *Bagwell*, 129/170, 58 S. E. 650; *Allen*, 129/203, 58 S. E. 649; *Adams*, 129/248, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158; *Jeiner*, 129/295, 58 S. E. 859; *Robinson*, 129/336, 58 S. E. 842; *Thomas*, 129/419, 59 S. E. 246; *Styles*, 129/425, 59 S. E. 249, 12 Ann. Cas. 176; *Morris*, 129/434, 59 S. E. 223; *McDonald*, 129/452, 59 S. E. 242; *Sasser*, 129/541, 59 S. E. 255; *Holmes*, 129/589, 59 S. E. 255; *Miles*, 129/589, 59 S. E. 274; *Rogers*, 129/589, 59 S. E. 288; *Dallas*, 129/602, 59 S. E. 279; *Yeates*, 129/636, 59 S. E. 771; *Glover*, 129/717, 59 S. E. 816; *Dotson*, 129/727, 59 S. E. 774; *Lewis*, 129/731, 59 S. E. 782; *Hamilton*, 129/747, 59 S. E. 803; *Freaney*, 129/759, 59 S. E. 788; *Harper*, 129/770, 59 S. E. 792; *Oliver*, 129/777, 59 S. E. 900; *Morman*, 133/76, 65 S. E. 146; *Hunter*, 133/78, 65 S. E. 154; *Giliard*, 133/82, 65 S. E. 143; *Hall*, 133/177, 65 S. E. 400; *Hawkins*, 113/181, 65 S. E. 380; *Battle*, 133/182, 65 S. E. 382; *Allen*, 133/260, 65 S. E. 431; *Brantley*, 133/264, 65 S. E. 426; *Goalsby*, 133/427, 66 S. E. 159; *Stepherson*, 133/430, 6 S. E. 21; *Burge*, 133/431, 66 S. E. 243; *Day*, 133/434, 66 S. E. 250; *Leonard*, 133/435, 66 S. E. 251; *Pride*, 133/438, 66 S. E. 259; *Tucker*, 133/470, 66 S. E. 250; *Westbrook*, 133/578,

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66 S. E. 788, 18 Ann. Cas. 295; *Suple*, 133/601, 66 S. E. 919; *Moore*, 133/605, 66 S. E. 779; *Rhodes*, 133/723, 66 S. E. 887; *Baker*, 142/619, 83 S. E. 531; *Harris*, 142/627, 83 S. E. 514; *Hickman*, 142/630, 83 S. E. 508; *Byrd*, 142/633, 83 S. E. 513, L. R. A. 1915-B, 1143; *Ray*, 142/655, 83 S. E. 518; *James*, 142/713, 83 S. E. 655; *Northfoot*, 142/714, 83 S. E. 655; *Montgomery*, 142/797, 83 S. E. 938; *Greer*, 142/66, 82 S. E. 484; *Butler*, 142/286, 82 S. E. 654; *Nail*, 142/595, 83 S. E. 226; *Bird*, 142/596, 83 S. E. 238, Ann. Cas. 1916C, 205; *O'Pry*, 142/600, 83 S. E. 228; *Clark*, 142/601, 83 S. E. 223; *Frank*, 142/617, 741, 83 S. E. 233, 645 L. R. A. 1915 D, 817; *Sewell*, 142/798, 83 S. E. 934; *Burney*, 142/812, 83 S. E. 937.

Demanded by evidence. *Anderson*, 122/175, 50 S. E. 51.

Demanded by evidence. *Grant*, 124/758, 53 S. E. 334; *Lewis*, 106/362, 32 S. E. 342.

Supported. *Nathan*, 131/48, 61 S. E. 994; *Young*, 131/498, 62 S. E. 707; *Dillard*, 131/500, 62 S. E. 705.

Warranted where deceased was assailant, but retired declining further contest and was pursued and stabbed by defendant. *White*, 118/787, 45 S. E. 595. Conviction warranted. *Grant*, 118/804, 45 S. E. 603. *Foskey*, 119/72, 45 S. E. 967; *Jenkins*, 119/431, 46 S. E. 628; *Barnard*, 119/436, 46 S. E. 644; *Brown*, 119/572, 46 S. E. 833. Not warranted. *Thornton*, 119/437, 46 S. E. 640; *Anderson*, 119/441, 46 S. E. 639.

Authorized by evidence. *Williams*, 148/483, 96 S. E. 385; *Williams*, 148/602 (dissent, 607), 97 S. E. 543.

Though manslaughter strongly indicated. *Cason*, 148/477, 97 S. E. 74.

Though impeaching evidence offered as to sole eye-witness for State. *Chapman*, 148/536, 97 S. E. 546.

Set aside because court gave charge

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not authorized by evidence. *Rooks*, 119/431, 46 S. E. 631.

Sustained. *Cliett*, 132/36, 63 S. E. 626; *Fallin*, 132/37, 63 S. E. 621; *Pickens*, 132/46, 63 S. E. 783; *Pressley*, 132/65, 63 S. E. 784; *Wims*, 132/242, 63 S. E. 831; *Jones*, 132/340, 63 S. E. 1114; *Peterson*, 132/342, 63 S. E. 1120; *Lowe*, 132/342, 63 S. E. 1114; *Jones*, 132/348, 63 S. E. 1102; *Scott*, 132/357, 64 S. E. 272; *Moore*, 132/412, 64 S. E. 264; *Shelton*, 132/413, 64 S. E. 262; *Elliott*, 132/758, 64 S. E. 1090.

Daughter, murder of, by father; her character not attacked, evidence of physician's examination, showing her a virgin, irrelevant. *Bullard*, 127/289, 56 S. E. 429.

Seduction or debauchery of minor daughter, as defense. *Gossett*, 123/431, 51 S. E. 394.

Defense and mitigation. *Holland*, 3 A. 466, 60 S. E. 205; *Warnack*, 3 A. 590, 60 S. E. 288; *Phillips*, 131/426, 62 S. E. 239; *Yopp*, 131/593, 62 S. E. 1036; *Turner*, 131/761, 63 S. E. 294; *Taylor*, 131/765, 63 S. E. 296.

In case of invasion of property or habitation; "serious injury," as used in Penal Code, § 72, not limited to felony. *Freeney*, 129/760, 766, 59 S. E. 788.

Of justifiable homicide; charge too restrictive. Attempt to commit any grade of felony justifies homicide. *Powell*, 101/11, 29 S. E. 309. 65 Am. St. R. 277.

Of reasonable fear of felony. *Long*, 127/350, 56 S. E. 444.

Of self, and of habitation or property. *Nix*, 120/162, 47 S. E. 516; *Horton*, 120/307, 47 S. E. 969. Reasonable fears. *Id.* 310. Convictions authorized. *Owens*, 120/205, 209, 47 S. E. 513, 545, and see *Owens*, 120/296, 48 S. E. 21. As against defense of accident. *Walker*, 120/491, 48 S. E. 184.

Limited to insanity, and to contention that deceased had insulted wife

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of accused. *Holton*, 137/87, 72 S. E. 949.

Under Penal Code. §§ 70, 71, 73. should not be given in charge in such manner as to confuse. *Pryer*, 128/28, 57 S. E. 93. See *Surles*, 148/538, 97 S. E. 538.

Need not be proved beyond reasonable doubt. *Dorsey*, 110/331, 35 S. E. 651.

Of accident or misfortune, as testimony tended to prove, error to confuse, with theory of involuntary manslaughter as raised by prisoner's statement. *Richards*, 114/835, 40 S. E. 1001.

Drawing pistol, no justification for homicide, under facts here; proper charge to jury. *Bowden*, 126/578. 55 S. E. 499.

Duel between the parties, killing at chance meeting before time appointed for, and without fresh cause, not manslaughter. *Bundrick*, 125/757. 54 S. E. 683.

Duress, as defense. *McLeod*, 128/17. 57 S. E. 83.

Dying declarations, testimony as to when admissible. *Harper*, 129/770. 59 S. E. 792; *Oliver*, 129/777, 59 S. E. 900.

Errors that do not constrain new trial, evidence demanding verdict. *Perry*, 102/366, 30 S. E. 903; *Luby*, 102/634, 29 S. E. 494.

Escaped convict, killing officer to prevent recapture, guilty of murder, though officer had no warrant. *Williford*, 121/173, 48 S. E. 962.

Ignorance that the deceased was an officer, no defense. *Harper*, 129/770, 59 S. E. 792.

Evidence as to wound and weapon admissible without specific descriptive allegations. *Bowens*, 106/760, 32 S. E. 666.

Demanding verdict of murder, new trial not granted for errors, no ground for recommendation to life imprisonment appearing. *Perry*, 102/

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366, 30 S. E. 903; *Luby*, 102/634. 29 S. E. 494.

Insufficient to identify accused beyond a reasonable doubt as the person who did the killing, conviction set aside. *Patton*, 117/230, 43 S. E. 533.

Not admissible on trial for murder. Statement of one jointly indicted with accused separately tried. *Gibbs*, 144/166, 86 S. E. 543. **Dying declaration**. *Howard*, 144/169, 86 S. E. 540.

Not sufficient to convict one accompanying actual perpetrator. *Walker*, 118/10, 43 S. E. 856.

Of actions, intentions, motives, and all circumstances making up *res gestæ*, including conduct and language of the participants at time of killing and in affray immediately preceding it, admissible. *Robinson*, 118/198. 44 S. E. 985.

Relevant on trial for murder; that deceased testified against accused for gaming. Indictment and sentence for gaming also admissible. Indictment charging witness with the murder, admissible only to discredit him. *Hayes*, 126/95, 54 S. E. 809.

Showing murder, though motive obscure. *Williams*, 147/53, 92 S. E. 864.

That accused was bailed in small amount, irrelevant. *Greason*, 118/808, 45 S. E. 615.

That deceased was "a small delicate man," admissible, when. *Wells*, 115/577, 42 S. E. 39.

Sufficient to convict of murder. *Morgan*, 137/21, 72 S. E. 347; *Jones*, 137/21, 72 S. E. 410; *Bruce*, 139/594, 77 S. E. 797; *Clements*, 123/547, 51 S. E. 595; *Bell*, 126/568, 55 S. E. 476; *Goolsby*, 147/259, 93 S. E. 407; *Hudson*, 101/521, 28 S. E. 1010; *Scott*, 135/29, 68 S. E. 792; *Tucker*, 135/79, 68 S. E. 786; *Robinson*, 135/217, 69 S. E. 113; *Reed*, 130/52, 60 S. E. 191; *Toomer*, 130/63, 60 S. E. 198; *Lyles*, 130/295,

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60 S. E. 578; *Herrington*, 130/308, 60 S. E. 572; *Moore*, 130/322, 60 S. E. 544; *Burley*, 130/343, 60 S. E. 1006; *Lovett, Drane, Dawson*, 130/349, 60 S. E. 851, 863; *Williams*, 130/400, 60 S. E. 1053; *Hixon*, 130/479, 61 S. E. 14; *Brown*, 130/623, 61 S. E. 477; *Summerlin*, 130/791, 61 S. E. 849.

Warranting finding of murder or of manslaughter. *Chestnut*, 112/367, 37 S. E. 384.

Father, murder of, by assassination, twice found. *Johnson*, 130/22, 60 S. E. 158.

Murder of; evidence of threat by mother of accused, not in his presence, not admissible. *Owens*, 118/753, 45 S. E. 598.

Feeling of deceased towards accused, admissibility of testimony of. *Sasser*, 129/541, 59 S. E. 255.

Habitation, law as to defense of, when inapplicable on trial for. *Rumsey*, 126/425, 55 S. E. 167.

Whether theory of forcible attack and invasion on, was involved; court equally divided in opinion. *Freaney*, 129/760, 59 S. E. 788.

Infanticide; conviction of murder sustained. *Allen*, 128/53, 57 S. E. 224.

By scissors or penknife, murder. *Fletcher*, 122/574, 50 S. E. 360.

Insanity as defense. *Battle*, 105/708, 32 S. E. 160; *Taylor*, 105/746, 31 S. E. 764; *Carroll*, 113/720, 39 S. E. 285; *Minder*, 113/772, 39 S. E. 284; *Roberts*, 123/148, 51 S. E. 374; *Allams*, 123/500, 51 S. E. 506; *Glover*, 129/717, 59 S. E. 816; *Strickland*, 137/114, 72 S. E. 922; (epileptic) *Quattlebaum*, 119/433, 46 S. E. 677.

As defense, not sustained. *Polk*, 148/34, 95 S. E. 988; *Brown*, 148/264, 96 S. E. 435; *Adams*, 117/302, 43 S. E. 703.

Insane delusion, as defense. *Flanagan*, 103/619, 30 S. E. 550.

Mental weakness of accused, proof of, when not allowed. *Rogers*, 128/

Murder—(Continued).

67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364.

Insurance money as motive for murder. *Johnson*, 130/22, 60 S. E. 158.

Intent to kill by piece of wood, or that it was a deadly weapon, did not necessarily result from evidence. *Taylor*, 108/384, 34 S. E. 2.

In striking with brick or rock, for jury's determination. *Hunter*, 147/823, 95 S. E. 668.

Issue of, in striking with hoe. *Williams*, 135/290, 291, 69 S. E. 177.

To kill, murder without. *Harris*, 119/117, 45 S. E. 973.

Interval "sufficient for the voice of reason and humanity to be heard," between provocation and homicide, a question for the jury. *Robinson*, 128/259, 57 S. E. 315; *White*, 118/787, 45 S. E. 595.

Involuntary killing in commission of unlawful act tending to destroy human life, murder by. *Delk*, 135/315, 69 S. E. 541, 22 Ann. Cas. 105. See *Felder*, 135/220, 69 S. E. 106; *Ashford*, 144/832, 87 S. E. 205.

Issue as to murder, manslaughter, or justifiable homicide. *Jordan*, 143/449, 85 S. E. 327; *Butler*, 143/484, 85 S. E. 340.

Joint indictment for murder, in single count; conviction of one defendant, acquittal of others; no conviction of assault with intent, upon evidence of independent assault. *Walker*, 136/126, 70 S. E. 1016.

Joint defendant tried and convicted of murder after verdict of manslaughter as to his codefendant. *McDonald*, 23 A. 125, 97 S. E. 556.

Justifiable homicide or murder, issue of. *Werley*, 138/336, 75 S. E. 240.

Limitations, no statute of, as to prosecutions for murder. *Sikes*, 20 A. 80, 92 S. E. 553.

Malice, homicide with; presumption. *Dorsey*, 110/331, 35 S. E. 651.

As element of murder; error held not harmful to accused convicted of manslaughter. *Dunwoody*, 23 A. 93, 97 S. E. 561.

Murder—(Continued).

Presumed, where voluntary homicide shown without circumstances of excuse or extenuation. *Robinson*, 129/336, 58 S. E. 842. But see *Surles*, 148/537, 97 S. E. 538.

Murder by homicide with. *Pierce*, 132/30, 63 S. E. 792; *Pressley*, 132/65, 63 S. E. 784.

Conflicting theories of, and of want thereof. *Delk*, 135/312, 69 S. E. 541, 22 Ann. Cas. 105.

Failure to charge "there can be no malice without motive," not error, where Penal Code, §§ 60-62, given, and it was charged there can be no murder without malice. *Lewis*, 129/731, 59 S. E. 782.

When presumed, and burden put on accused. *Anderson*, 122/175, 50 S. E. 51.

Meaning of "killing . . . by permission of the law in advancement of public justice." *Supreme Lodge*, 129/198, 58 S. E. 628, 13 L. R. A. (N. S.) 258, 121 Am. St. R. 216, 12 Ann. Cas. 307.

Mistress, murder in killing of, for recent lewd acts with other man. *Cyrus*, 102/616, 29 S. E. 917.

Motive for murder; admissibility of testimony as to; poverty of accused can not be proved as motive, though it may be shown he was an heir of deceased and had spoken of money the deceased had in bank. *Johnson*, 128/71, 57 S. E. 84.

Mutual agreement and intent to fight, resulting in murder, where killing is with malice. *Cargile*, 137/775, 74 S. E. 621.

Negligence, criminal or gross, in handling rifle, murder as result of; charge error. *Roberts*, 112/542, 37 S. E. 879.

New trial for murder after conviction of voluntary manslaughter. *Waller*, 104/505, 30 S. E. 835.

Oats, murder by killing for cutting. *Nix*, 120/162, 47 S. E. 516.

Murder—(Continued).

Opportunity to kill, as to whether accused had. *Anderson*, 122/161, 50 S. E. 46.

Paramour, former, of accused, murder of man living with; admissibility of evidence. *Brown*, 141/6, 80 S. E. 320.

Participation in murder not shown, perpetrator uncertain, conviction set aside. *Ward*, 102/531, 28 S. E. 982.

Past wrong, murder on account of. *Pride*, 133/438, 66 S. E. 259.

However heinous, no defense.

Channell, 109/152, 34 S. E. 353.

Penal Code, § 74, as to defense of person or reputation of parent or child, discussed. *Gossett*, 123/435, 51 S. E. 394.

Poison, murder by, evidence sufficient to convict. *Chelsey*, 121/340, 49 S. E. 258.

Admissibility of evidence as to other poisoning. *Cawthon*, 119/408, 46 S. E. 897.

Murder by causing death of one while attempting to kill another (putting poison in flour). *Chelsey*, 121/340, 49 S. E. 258.

Murder by, proved by circumstantial evidence. *McNaughton*, 136/600, 71 S. E. 1038.

Presumption of intent, from weapon. *McLeod*, 128/17, 57 S. E. 83.

Raised by circumstantial evidence. *Campbell*, 124/432, 52 S. E. 914. On conflicting theories. *Mann*, 124/760, 53 S. E. 324. 4 L. R. A. (N. S.) 934.

Of murder, not raised by admission or evidence of killing, if coupled with exculpatory statement or testimony of mitigation. *Perkins*, 124/6, 52 S. E. 17; *Green*, 124/344, 52 S. E. 431. See *Surles*, 148/537, 97 S. E. 538.

Previous understanding between accused and person who did the killing, charge as to, not warranted by evidence, reversible error. *Dyal*, 103/425, 30 S. E. 254.

Murder—(Continued).

Principal in second degree of murder by standing and watching; indictment need not distinguish from principal in first degree. *Lowe*, 125/55, 53 S. E. 1038. See *Kettles*, 145/7, 88 S. E. 197.

In second degree not shown by evidence. *Goolsby*, 147/169, 93 S. E. 88. Contrast *Thompson*, 147/745, 95 S. E. 292.

In second degree of murder, guilt of. *Miller*, 139/716, 723, 78 S. E. 181.

In first and second degree of murder; indictment and evidence, when sufficient. *Morgan*, 120/294, 48 S. E. 9.

In first degree, indictment charging one as, is sustained by proving he was principal in second degree. *Bradley*, 128/20, 57 S. E. 237.

Punishment of principals the same; what evidence supports conviction. *Lewis*, 136/355, 71 S. E. 417.

Sufficiency of evidence on trial of principals and accessories in murder. *Rawlins*, 124/34, 52 S. E. 1.

Murder charged to one as principal in first degree; conviction on evidence showing him guilty as principal in second degree, he having advised killing and being present thereat. *Patterson*, 124/4, 52 S. E. 77.

Instruction as to principals in first and second degrees in murder, not erroneous. *Morman*, 133/76, 65 S. E. 146.

Provocation; proper charge as to. *Fargerson*, 128/27, 57 S. E. 101; *Pryer*, 128/29, 57 S. E. 93; *Rogers*, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364; *Bird*, 128/253, 57 S. E. 320.

By words, no excuse for murder. *Robinson*, 118/198, 44 S. E. 985; *Griggs*, 148/211, 96 S. E. 262.

Murder, where accused provoked difficulty to get excuse for slaying. *Chancey*, 141/54, 80 S. E. 287.

Punishment of murder; proper charge as to power of jury. *Thomas*, 129/420, 424, 59 S. E. 246.

Murder—(Continued).

Pursuing and slaying adversary immediately after mutual combat, murder by. *Williams*, 130/400, 60 S. E. 1053.

Rape, murder following; admissibility of testimony of woman's pregnancy. *Hart*, 141/672, 81 S. E. 1108.

Reasonable fears as defense. *Battle*, 103/58, 29 S. E. 491; *Daniel*, 103/202, 29 S. E. 767; *Robinson*, 129/337, 58 S. E. 842. See *Alexander*, 118/26, 44 S. E. 851; *Stephens*, 118/762, 45 S. E. 619.

Of felony must be based on apparently urgent and pressing danger. *Tolbirt*, 124/768, 53 S. E. 327.

Doctrine of, restricted too much by charge of court. *Pryer*, 128/28, 57 S. E. 93.

Acts not sufficient as provocation to reduce grade of homicide may excite reasonable fears and justify on ground of self-defense. *Johnson*, 105/665, 31 S. E. 399.

Error in limiting charge of court as to reasonable fears and apparent necessity to kill, by adding instructions making the right to kill depend on actual danger. *Dotson*, 129/728, 59 S. E. 774.

Instructions as to fears of reasonable man as defense, proper though the accused was a woman. *Anderson*, 117/255, 43 S. E. 835.

Recommendation of life imprisonment for murder, proper charge to jury as to. *Williams*, 119/426, 46 S. E. 626.

Murder found without, no error of law. *McCrary*, 137/784, 74 S. E. 536.

Of life imprisonment, murder found with, is conviction of capital felony. *Cesar*, 127/710, 57 S. E. 66.

Res gestæ of shooting; what admissible. *Glover*, 137/82, 72 S. E. 926.

Shooting at sister of slain man as she fled, and her cries for help, res gestæ of homicide. *Arnold*, 131/494, 62 S. E. 806.

Murder—(Continued).

Revenge for past injury, murder in. *Mize*, 135/292, 69 S. E. 173; *Ellison*, 137/194, 73 S. E. 255.

Self-defense apparently an after-thought; credibility of witnesses for jury. *Hall*, 124/649, 651, 52 S. E. 891.

Law as to, in Penal Code, § 73. when error to give in charge. *Lowman*, 109/501, 34 S. E. 1019; *Delegal*, 109/518, 35 S. E. 105; *Parks*, 105/242, 31 S. E. 580. When proper to charge. *Glover*, 105/597, 31 S. E. 584.

Proper instructions as to. *Jenkins*, 123/523, 51 S. E. 598.

Right of, when not forfeited by having provoked the difficulty or made the first assault; rule that slayer must have been faultless, explained. *Coleman*, 121/599, 49 S. E. 716.

Shooting members of officer's posse, in resistance of arrest, murder by. *Watson*, 136/236, 71 S. E. 122.

At one and killing another, murder by. *Charlon*, 106/400, 32 S. E. 347; *Glover*, 137/82, 72 S. E. 926; *Godbee*, 141/516, 521, 81 S. E. 876; *Hamilton*, 129/747, 59 S. E. 803. By shooting into crowd without intending to kill any one of them. *Ib.* 748; *Smith*, 124/214, 52 S. E. 329; *Battise*, 124/867, 53 S. E. 678; cf. *Nelly*, 124/10, 52 S. E. 19.

Wilful or accidental, issue of. *Arnold*, 131/494, 62 S. E. 806; *Woods*, 137/85, 72 S. E. 908; *Washington*, 137/218, 73 S. E. 512; *Josey*, 137/769, 74 S. E. 282.

Murder by, confessed. *Lindsay*, 138/818, 822, 76 S. E. 369.

Murder by, assassination shown. *Turner*, 138/808, 76 S. E. 349.

In pursuance of unlawful attempt to arrest, by deputy sheriff, murder by. *Norton*, 137/842, 74 S. E. 759.

Admissibility of testimony. *Higgs*, 145/414, 89 S. E. 361.

Defense of accident. *Boyd*, 136/340, 71 S. E. 416. Defense of ac-

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cident not supported. *Roberts*, 138/815, 76 S. E. 361.

Defense of justification on account of battery; issue as to aggressor. *Johnson*, 136/804, 72 S. E. 233.

Defense of reasonable fear of felony. *Herrington*, 130/316, 320, 60 S. E. 572.

Defense that fatal wound was given by another person. *Glover*, 137/82, 72 S. E. 926.

Evidence as to murder by. *Gargile*, 136/55, 56, 70 S. E. 873; *Waycaster*, 136/95, 70 S. E. 883; *Driscoll*, 136/104, 70 S. E. 875; *Harris*, 136/107, 70 S. E. 952; *Hart*, 135/356, 69 S. E. 530; *Jones*, 135/357, 69 S. E. 527.

In resistance of arrest by town marshal at night, murder. *Perdue*, 135/278, 69 S. E. 184.

Principals in first and second degrees of, murder by. *Futch*, 137/75, 72 S. E. 911.

Testimony as to decedent's character for violence. *Powell*, 101/9, 29 S. E. 309, 65 Am. St. R. 277.

Murder by, where shots were fired by accused and others at the same time, and no conspiracy. Evidence must show that death resulted from his act. *McLeroy*, 125/240, 54 S. E. 125. See *Davis*, 125/299, 54 S. E. 126; *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426. Includes offense of shooting at another. *Watson*, 116/607, 43 S. E. 32, 21 L. R. A. (N. S.) 1.

With intent to disable only, murder by. *Stovall*, 106/444, 32 S. E. 586.

With deadly weapon, intentional, though without intent to take life, murder by. *Scott*, 132/357, 64 S. E. 272.

Murder by intentional and reckless discharge of gun under circumstances tending to kill human being. *Austin*, 110/748, 36 S. E. 52, 78 Am. St. R. 134.

Conviction of murder by, authorized. *Sims*, 144/90, 86 S. E. 230; *Jefferson*, 137/383, 73 S. E. 499.

Murder—(Continued).

Conviction of murder by, sustained. *Devereaux*, 140/225, 78 S. E. 849; *Warren*, 140/228, 78 S. E. 836; *Lynn*, 140/387, 79 S. E. 29; *Webb*, 140/779, 79 S. E. 1126; *Short*, 140/780, 80 S. E. 8; *Brannon*, 140/787, 80 S. E. 7; *Smith*, 140/791, 79 S. E. 1127; *Bexley*, 141/1, 80 S. E. 314; *McCrary*, 141/4, 80 S. E. 305; *Duncan*, 141/4, 80 S. E. 317; *Brown*, 141/5, 80 S. E. 320; *Hall*, 141/7, 80 S. E. 307; *Crumbly*, 141/17, 80 S. E. 281; *McLaughlin*, 141/132, 80 S. E. 631; *Hawkins*, 141/212, 80 S. E. 711; *Wilburn*, 141/510, 81 S. E. 444; *Godbee*, 141/515, 81 S. E. 876; *Clements*, 141/667, 81 S. E. 1117; *Coleman*, 141/731, 737, 82 S. E. 227, 228; *Brown*, 141/783, 82 S. E. 238; *Dennis*, 146/191, 91 S. E. 19; *Hicks*, 146/221, 91 S. E. 57; *Lucas*, 146/315, 91 S. E. 72; *Josey*, 137/769, 74 S. E. 282; *Crawley*, 137/777, 74 S. E. 537; *Gibbons*, 137/786, 74 S. E. 549.

Sister, when justifiable to kill for protection of; charge of court as to, abstractly correct, but not authorized by evidence here. *Rooks*, 119/431, 46 S. E. 631.

Stabbing wife of accused, murder by. *Glawson*, 146/38, 90 S. E. 955.

Defense of justification by assault with deadly weapons. *Helms*, 136/799, 72 S. E. 246.

Conviction of murder by, sustained. *Helms*, 138/827, 832, 76 S. E. 353; *Trice*, 137/784, 74 S. E. 243; *Williams*, 145/177, 88 S. E. 958.

Murder not necessarily found from killing by cut or stab on receiving blow with hand or fist. *Heard*, 114/90, 39 S. E. 909.

Statement by deceased of his understanding with accused, testimony on trial for murder as to, when incompetent. *Yates*, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620.

Striking on head with ax, murder by. *Cullins*, 148/17, 95 S. E. 675; *Reed*, 148/18, 95 S. E. 692.

Murder—(Continued).

With ax, murder by, on provocation by opprobrious words. *Hutchins*, 136/246, 71 S. E. 162.

Suicide theory, admissibility of evidence offered to rebut. *Green*, 125/742, 54 S. E. 724.

Theory of self-defense or reasonable fears, murder shown by all eye-witnesses; Penal Code, § 72, and last clause of § 70, not applicable. *McDonald*, 129/452, 59 S. E. 242.

Thief, murder by slaying, without necessity. *Drew*, 136/658, 71 S. E. 1108.

Threats by deceased, uncommunicated to accused; new trial not required by newly discovered evidence as to. *McMillan*, 128/25, 57 S. E. 309.

By slayer, admissibility of evidence offered to show. *Harris*, 109/280, 34 S. E. 583.

Throwing rock at head of decedent, murder by. *Boone*, 145/37, 88 S. E. 558.

Murder by, not shown beyond reasonable doubt. *Jordan*, 124/780, 53 S. E. 331.

Unprovoked murder; conviction supported by testimony of witness who swore falsely before coroner under threats. *Rouse*, 136/356, 368, 71 S. E. 667.

Convictions upheld. *Brown*, 148/264, 96 S. E. 436; *Wilder*, 148/270, 96 S. E. 325.

Verdict finding murder with recommendation "to mercy," no reason for attributing to jury a belief that punishment would be less than life imprisonment. *Tillman*, 136/59, 70 S. E. 876.

Of murder demanded. *Mills*, 104/502, 30 S. E. 778; *Leonard*, 110/291, 34 S. E. 1015.

Of murder unauthorized where deceased, though without weapon, began altercation, was advancing on accused, and accused was where he was employed to be, and was retreating and warning deceased. *Stephens*, 105/653, 31 S. E. 400.

Murder—(Continued).

Possible verdicts under indictment for murder. **Thomas**, 121/331, 49 S. E. 273.

Wife, murder of. **Toomer**, 130/63, 60 S. E. 198. Of wife and child. **Lyles**, 130/294, 60 S. E. 578.

Natural presumption against uxoricide, rebutted by proof of criminal relation with other woman. **Shaw**, 102/670, 29 S. E. 477.

Murder of, testimony of her pregnancy competent on question of recommendation by jury. **Withrow**, 136/337, 338, 71 S. E. 139.

Unchastity of, as provocation for husband killing her; not alone sufficient to reduce grade of offense. **Rogers**, 128/67, 57 S. E. 227, 10 L. R. A. (N. S.) 999, 119 Am. St. R. 364.

Murder of husband by; circumstantial evidence sufficient; second conviction not disturbed, after approval by judge. **Campbell**, 124/432, 52 S. E. 914. Of wife by husband, not shown beyond reasonable doubt, conviction set aside. **Jordan**, 124/780, 53 S. E. 331.

Murder of husband by; inadmissibility of hearsay testimony of illicit relations. **Thomas**, 143/268, 84 S. E. 587.

Husband killing for adultery with, guilty of murder, under facts here. **Channell**, 109/152, 34 S. E. 353.

Of deceased, illicit relations of, with slayer, facts not admissible in evidence as tending to show. **Sasser**, 129/541, 59 S. E. 255.

Of accused, murder by killing on information that deceased slandered. **Perryman**, 114/545, 40 S. E. 746.

Found in company of paramour, murder by slaying. **Jackson**, 135/684, 70 S. E. 245.

Killing by husband on seeing wife kissed by one discovered in adultery with her on a former occasion. **Baker**, 111/142, 36 S. E. 607.

Murder of wife occupying house of ill fame. **Lampkin**, 145/40, 88 S. E. 563.

Murder—(Continued).

Murder of husband by man found with wife at night. **Rhodes**, 133/723 66 S. E. 887.

Woman (former paramour), murder of, on her refusal to resume illicit relation. **Floyd**, 143/286, 290, 84 S. E. 971.

With whom accused had lived in unlawful cohabitation, murder of. **Golatt**, 130/20, 60 S. E. 107.

Killing man invading her house, and urging or attempting sexual intercourse, murder by. **Freeney**, 129/760, 59 S. E. 788.

Murder of, without provocation or distinct motive. **Story**, 145/43, 88 S. E. 548.

Murder of; admissibility of sayings of accused, made before her disappearance. **Walker**, 141/525, 81 S. E. 442.

Words, threats, menaces, etc., effect of. **Clay**, 124/795, 53 S. E. 179. Homicide not reduced from murder by mere contemptuous gestures, threats, or words, **Varner**, 139/613, 77 S. E. 808.

Wound, made by accused, fact that timely medical attention to, might have prevented death, not avail him, when. **Bonner**, 125/237, 54 S. E. 143.

Negligent or unskillful treatment of, does not relieve of responsibility for murder or manslaughter. **Downing**, 114/30, 39 S. E. 927.

Murder by maliciously making non-mortal wound that produces disease resulting in death. **Clements**, 141/667, 81 S. E. 1117.

Wrecking railroad-train, murder by. **Shaw**, 102/661, 29 S. E. 477.

See catchwords, **Assault with intent to murder**, **Homicide**, **Intent**, **Malice**, **Mutual combat**, **Weapon**.

Mutual combat or intent to fight, evidence of, on trial for assault with intent to murder. **Pollard**, 124/100, 52 S. E. 149. Mutual intent to fight does not necessarily show manslaughter. **Dickens**, 137/530, 73 S. E. 826.

Charge as to, authorized by evidence. **Harrison**, 125/267, 53 S. E. 958. Omission to charge as to, error. **Findley**, 125/583, 54 S. E. 106. May exist without mutual blows. *Ib.*

Evidence showing. **Curtis**, 2 A. 224, 58 S. E. 291. Not shown. **Reeves**, 2 A. 416, 58 S. E. 548; **Lightsey**, 2 A. 443, 58 S. E. 686; **Taylor**, 131/765, 63 S. E. 296.

Evidence warranting charge on theory of. **Moss**, 126/542, 55 S. E. 481; **Park**, 126/576, 55 S. E. 489. Penal Code, § 73, properly given in charge there being some evidence of altercation and mutual combat. **Goodin**, 126/561, 55 S. E. 503.

Facts raising issue of. **Smith**, 118/61, 44 S. E. 817; **Robinson**, 118/198, 44 S. E. 985; **Greason**, 118/808, 45 S. E. 615.

Giving rise to theories of justification and of manslaughter. **Ricketson**, 134/306, 67 S. E. 881.

Inference of, arose from statement of accused. **Miller**, 133/155, 65 S. E. 638. Evidence authorizing finding. **Hall**, 133/178, 65 S. E. 400.

Law of murder and of voluntary manslaughter as applicable to. **Dorsey**, 110/331, 35 S. E. 651; **Stubbs**, 110/916, 36 S. E. 200.

May be inferred from conduct. **Sapp**, 2 A. 449, 58 S. E. 667; **Lee**, 2 A. 484, 58 S. E. 676; **Harris**, 2 A. 487, 58 S. E. 680.

Shown by evidence of mutual intent to fight and of blow struck. **Bailey**, 148/401, 96 S. E. 862.

Theory of. **Miller**, 139/723, 78 S. E. 181.

When one can be treated as participant fighting with weapon, though he did not use it. **Roark**, 105/741, 32 S. E. 125.

Negligence, when criminal. **Tift**, 17 A. 663, 88 S. E. 41; **Dennard**, 14 A. 485, 81 S. E. 378. Whether criminal, a jury question. **Moody**, 14 A. 527, 81 S. E. 588. Error in charge to jury as to opportunity to know. *Ib.*

In act not constituting the crime, no basis of conviction. **Miley**, 118/275, 45 S. E. 245.

None towards injured person warned of danger and wanting in due care. **Carbo**, 4 A. 583, 62 S. E. 140.

Obscene and vulgar language, in presence of female. **Finch**, 124/657, 52 S. E. 890.

Not committed by delivering written communication. **Williams**, 117/13, 43 S. E. 436.

Defined; applied to remark of minister in pulpit, in hearing of female, as to her "big fat rump." **Holcombe**, 5 A. 47, 62 S. E. 647.

In presence of female; conviction warranted. **Sherrer**, 17 A. 335, 86 S. E. 735; **Hays**, 14 A. 604, 81 S. E. 914; **Smith**, 14 A. 823, 82 S. E. 355. Sufficiency of provocation for, a question exclusively for jury. **Jackson**, 14 A. 19, 80 S. E. 20; **Jackson**, 14 A. 756, 82 S. E. 253; **Sherrer**, 17 A. 335, 86 S. E. 735; **Wiggins**, 17 A. 749, 88 S. E. 411.

Ignorance of female's presence, no defense, when there was nothing to prevent the accused from seeing her. **Strickland**, 14 A. 471, 81 S. E. 361.

In the hearing is "in the presence," under code section as to obscene language. **Holcombe**, 5 A. 53, 62 S. E. 647.

Burden on accused to show provocation for using. **Holcombe**, 5 A. 47, 53, 62 S. E. 647.

In presence of female; facts authorizing conviction; charge of court, giving code section partly inapplicable, not require reversal, though better to read only the part applicable. **Hays**, 10 A. 823, 74 S. E. 314.

Saying to woman in bed, "Get further, I want to lie down with you," etc., obscene, when. **Morris**, 6 A. 395, 65 S. E. 58. Absence of provocation; proper charge to jury as to. **Morris**, 6 A. 397, 65 S. E. 58.

Substance of language used may be alleged or proved. **Morris**, 6 A. 395, 65 S. E. 58.

Conviction not warranted. **Handley**, 115/584, 41 S. E. 992.

Error in charging jury that if certain profane words set out in the indictment were used, they would be authorized to find the accused guilty. **Jackson**, 14 A. 19, 80 S. E. 20.

Exact words charged in indictment need not be proved; proof of some of those laid, sufficient, when. **Sherrer**, 17 A. 335, 86 S. E. 735.

Obstructing legal process by preventing rearrest, not offense of rescue. **Adams**, 121/166, 48 S. E. 910.

Conviction based on threats alone, set aside. **Allen**, 5 A. 237, 62 S. E. 1003.

Conviction unwarranted where officer was serving warrant which he had no authority to execute. **Vince**, 113/1069, 39 S. E. 313.

Evidence did not support indictment as to name of person against whom search warrant was issued. **Alexander**, 23 A. 546, 99 S. E. 58.

Manner of, sufficiently alleged. Lawful order not written is within statute. Accused cut rope and took cow from constable; conviction demanded. **Gibson**, 118/29, 44 S. E. 811.

Mere refusal to unlock door, on demand of levying officer, to enable him to enter for purpose of levying distress warrant, not constitute offense. **Vince**, 113/1070, 39 S. E. 485.

No defense that deputy-sheriff had not filed his bond and oath of office. **Stephens**, 106/118, 32 S. E. 13.

Not shown. Fi. fa. on foreclosure of absolute bill of sale, based on affidavit not showing that bill was given to secure debt. **Searcy**, 114/270, 40 S. E. 235.

Offense not committed by one placing himself in door and making violent threats; forcible resistance must be alleged and proved. **Hutchinson**, 9 A. 62, 70 S. E. 352.

The words "obstruct, resist, or oppose," in Penal Code, § 311, imply forcible resistance. **Moses**, 6 A. 251, 64 S. E. 699.

Offense of, not complete without notice of officer's authority. Knowledge that sheriff had warrant elsewhere, not sufficient. **Jones**, 114/73, 39 S. E. 861.

Offense not complete without knowledge of his official character and that he is attempting to execute lawful process. **McLendon**, 12 A. 691, 78 S. E. 139.

Obstructing registered road; evidence not sufficient. **McGowan**, 124/422, 52 S. E. 738.

Obtaining goods and money on false writing, *allegata et probata* variant. **Carey**, 112/226, 37 S. E. 405; **Reagan**, 112/372, 37 S. E. 380.

On false writing; indictment sufficient and conviction warranted. **Gray**, 6 A. 428, 65 S. E. 191.

On fictitious name to check. **Sharp**, 7 A. 605, 67 S. E. 699; **Saffold**, 11 A. 329, 333, 75 S. E. 338.

Occupying land under forged conveyance; meaning of "occupy." **Davis**, 20 A. 68, 92 S. E. 550.

Under forged title, prosecution not barred during possession, nor within four years after possession abandoned. **Coker**, 115/210, 41 S. E. 684.

Officer, resistance of, conviction warranted. **Howell**, 5 A. 185, 62 S. E. 1001. Affidavit broad enough to support accusation. **Howell**, 5 A. 186, 62 S. E. 1000.

Offense in presence or view of, when carrying concealed weapon is not. **Hughes**, 2 A. 33, 58 S. E. 390.

Homicide by arresting officer. **Cooner**, 16 A. 539, 85 S. E. 688.

Extortion by. **Levar**, 103/42, 29 S. E. 467; **Herrington**, 103/318, 29 S. E. 931, 68 Am. St. R. 95.

Extortion by; indictment and evidence, sufficient. **Dean**, 9 A. 303, 71 S. E. 597.

Resistance of; conviction not warranted. **Moses**, 6 A. 251, 64 S. E. 699.

Obstruction of, in executing warrant; evidence not authorizing conviction. **Raines**, 13 A. 693, 79 S. E. 860. Offense not committed by threats. **Raines**, 13 A. 694, 79 S. E. 860. See catchword "Homicide," *supra*

Oysters taken from bed between high and low-water mark on shore of inlet of sea, when no offense. *Johnson*, 114/790, 40 S. E. 807.

Taken from private bed; conviction proper. *Fraser*, 112/13, 37 S. E. 114. See *Houston*, 124/417, 52 S. E. 757.

Taking from private bed, without consent of owner; evidence not warranting conviction. *Harris*, 14 A. 574, 81 S. E. 815; *Curry*, 15 A. 486, 83 S. E. 877.

Packing-house agent failing to register and pay tax; indictment sufficient; evidence admissible. *Leps*, 120/139, 47 S. E. 572.

Peddling without license; agent who took orders for goods afterwards shipped from another State, and delivered them, was peddler, but protected by interstate-commerce clause of U. S. constitution. *Stone*, 117/292, 43 S. E. 740.

"Peddler" defined; contract of sale by unlicensed peddler, a nullity. *Singleton*, 14 A. 528, 81 S. E. 596. Corporation cannot be licensed as peddler. *Ib.* 527.

One taking orders for, and another delivering, goods from another State, as agents for manufacturer, when interstate-commerce law did not protect. *Duncan*, 105/457, 30 S. E. 755.

Perjury by affidavit "to the best of affiant's knowledge and belief." *Herring*, 119/709, 714, 46 S. E. 879.

Can be committed only in a judicial proceeding, i. e., in a proceeding in a legally constituted court. *Garrett*, 18 A. 360, 89 S. E. 380.

Charge of false statement as to unlawful sale to one, sustained by proof as to sale to him and another jointly. *McLaren*, 4 A. 648, 62 S. E. 138.

Circumstances corroborating chief witness for State, sufficiency of. *Sikes*, 105/594, 31 S. E. 567.

Committed by making affidavit containing statements contradictory to each other. *Sistrunk*, 18 A. 42, 88 S. E. 796.

Conviction of, need not precede trial of suborner. Conviction on testimony

of accomplice. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145. Indictment good as against demurrer. *Goodwin*, 118/770, 45 S. E. 620. Knowledge of falsity essential. *Ib.*

Conviction of, on testimony of one witness, and of corroborating circumstances. Strength of corroboration required. *Nance*, 126/95, 54 S. E. 932.

Deed as to which perjury was alleged to have been committed, not excluded from evidence because not identical with description in indictment. *Mallard*, 19 A. 99, 90 S. E. 1044.

Essential elements of, omitted from charge to jury. *Cox*, 13 A. 688, 79 S. E. 909. Burden on State to prove that the accused was duly sworn. *Ib.*

Evidence necessary for conviction of; and when sufficient. *Parham*, 3 A. 468, 60 S. E. 123.

Evidence warranting conviction of. *Haines*, 109/526, 35 S. E. 141.

Materiality of testimony. *Aaron*, 10 12 A. 40, 76 S. E. 753. Rule that false testimony must be material to the issue. *Wilson*, 115/207, 41 S. E. 696, 90 Am. St. R. 104. Proof should show materiality of perjured testimony. *Askew*, 3 A. 79, 59 S. E. 311; *Black*, 13 A. 541, 79 S. E. 173.

Test of materiality of the false statement. *McLaren*, 4 A. 645, 62 S. E. 138; *Black*, 13 A. 541, 79 S. E. 173.

May be assigned on false testimony going to the credit of a witness. *Wilson*, 115/206, 41 S. E. 696, 90 Am. St. R. 104.

No presumption that an oath was administered to one who made statements in court as a witness. *Cox*, 13 A. 688, 79 S. E. 909. Administration of oath; hand need not be on bible, or be raised. *Ib.*

Not committed by taking oath administered by officer outside his county. *Hutchins*, 8 A. 409, 69 S. E. 309.

Not excused by fear of conviction of crime. Such fear may afford reasonable explanation to jury. *Chandler*, 124/821, 53 S. E. 91.

Oath administered by judge where not authorized to preside, no basis for

prosecution, when. **Garrett**, 18 A. 360, 89 S. E. 380.

Oath before municipal body as basis of prosecution. **Broadwater**, 10 A. 458, 73 S. E. 601. Form of oath. *Id.* 461.

Oath could be administered by any one of commissioners constituting municipal court. **Broadwater**, 10 A. 458, 73 S. E. 601. Or by attorney authorized by court. **Cain**, 10 A. 473, 73 S. E. 623.

Of witness, as ground for setting aside verdict. **Hayes**, 16 A. 335, 85 S. E. 253; **Morgan**, 16 A. 559, 85 S. E. 827; **Clark**, 117/254, 43 S. E. 853; **Rogers**, 129/590, 59 S. E. 288; **Hinsman**, 14 A. 483, 81 S. E. 367; **Snow**, 14 A. 483, 81 S. E. 363; **Wilson**, 15 A. 632, 84 S. E. 81; **Burris**, 17 A. 331, 86 S. E. 739.

Proof of one material statement, though several statements be charged, may authorize conviction. **McLaren**, 4 A. 643, 62 S. E. 138.

Proved by one witness and corroborating circumstances. **McLaren**, 4 A. 646, 62 S. E. 138.

Rule as to corroboration of State's witness by witnesses, not applied where proof of the crime is necessarily based on circumstantial evidence. **Mallard**, 19 A. 99, 90 S. E. 1044.

Subornation of, an independent offense, though accessorial. Suborner may be tried before conviction of perjurer. Conviction on testimony of accomplice. **Stone**, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Subornation of, affidavit made to obtain criminal warrant may be basis of indictment for. **Herring**, 119/710, 46 S. E. 879.

As element of subornation proved by one witness and corroborating circumstances; subornation sufficiently shown by the perjurer's testimony. **Bell**, 5 A. 701, 63 S. E. 860.

Subornation of, can not be committed, unless perjury is committed. **Garrett**, 18 A. 360, 89 S. E. 380.

Language alleged not be proved literally; substantial proof sufficient. **Cain**, 10 A. 473, 73 S. E. 623; **McLaren**, 4 A. 643, 62 S. E. 138.

Variance between allegation and proof as to the proceeding in which the offense was committed. **Wilson**, 115/209, 41 S. E. 696, 90 Am. St. R. 104.

Physician must register in county in which he resides and practices, though registered in another, in which he formerly resided. **Murray**, 121/64, 48 S. E. 686.

Assault to murder by destruction of child in womb. **Snell**, 13 A. 158, 79 S. E. 71.

Involuntary manslaughter by, in administration of chloroform; sufficiency of indictment. **Roughlin**, 17 A. 205, 86 S. E. 452. Physician prescribing alcohol unlawfully; evidence authorizing conviction. **Gaskins**, 17 A. 807, 88 S. E. 592.

Prescription of, deemed necessary to save life, no defense to one charged with receiving and possessing whisky. **Waldermar**, 21 A. 504, 94 S. E. 624.

Pistol, carrying to public gathering; indictment sufficient; evidence not so. **Amorous**, 1 A. 313, 57 S. E. 999.

Pistol carrying without license, admission here not sufficient to convict. **Brown**, 15 A. 484, 83 S. E. 890.

Broken pistol, statute violated where one carrying, to owner, used it in making a hostile demonstration. **Morris**, 17 A. 271, 86 S. E. 462.

Charge of court as to defense, considered. **Butler**, 18 A. 201, 202, 89 S. 178.

Circumstances sufficient to convict. **Williams**, 12 A. 84, 76 S. E. 785.

Constitutionality of statute, question as to, not decided, when. **Casper**, 13 A. 303, 79 S. E. 94. Act of 1910 as to, constitutional. **Strickland**, 137/1, 72 S. E. 260, 36 L. R. A. (N. S.) 115, 27 Ann. Cas. 1913B, 323; **Strickland**, 9 A. 855, 72 S. E. 436; **Davis**, 9 A. 816, 72 S. E. 269. **Brown**, **Richardson**, **Campbell**, **Chatman**, 9 A. 817, 72 S. E. 269; **Alexander**, 9 A. 840, 72 S. E. 269; **Nero**, 10 A. 23, 72 S. E. 510; **Glenn**, 10 A. 131, 72 S. E. 927. Question as to constitutionality of statute as to, settled by Supreme Court; re-

fusal to submit it again to that court. **Armond**, 18 A. 140, 88 S. E. 990.

Conviction of carrying, not authorized by evidence of momentary holding. **Barnes**, 23 A. 6, 97 S. E. 410.

County in which he resided, one who obtained license in, and carried pistol in county to which he moved, not convicted. **Rogers**, 19 A. 751, 92 S. E. 230.

Cropper with pistol at landlord's dwelling, statutory exception as to "place of business" not apply in case of. **Boyd**, 10 A. 451, 73 S. E. 551.

Errors on trial, immaterial, in view of evidence demanding verdict. **Usry**, 17 A. 268, 86 S. E. 417; **Williams**, 15 A. 311, 82 S. E. 817.

Evidence warranting conviction. **Sullivan**, 14 A. 762, 82 S. E. 314; **Callo-way**, 20 A. 189, 92 S. E. 944; **Harden**, 17 A. 322, 86 S. E. 736; **James**, 10 A. 13, 72 S. E. 600; **Wilcox**, 10 A. 122, 72 S. E. 935. Evidence weak but sufficient to convict. **Stephens**, 16 A. 502, 85 S. E. 683.

Evidence not warranting conviction. **Brown**, 15 A. 484, 83 S. E. 890.

Examination, when statute not violated by having pistol in hand for. **Jackson**, 12 A. 427, 77 S. E. 371.

Farm on which one is working, carrying pistol on, not violate statute. **Idelett**, 14 A. 501, 81 S. E. 379; **Miller**, 12 A. 479, 77 S. E. 653; **Franklin**, 12 A. 483, 77 S. E. 653. Statute not violated by one carrying pistol on farm on which he resided and of which he was overseer. **Coker**, 12 A. 425, 76 S. E. 103, 991. See **Smith**, 14 A. 823, 82 S. E. 355.

Father carrying pistol to his home, on taking it away from his son, to prevent the son from having it, violated statute. **Dunlap**, 11 A. 722, 75 S. E. 1135.

Indictment may charge both carrying without license and carrying concealed weapon; plea and verdict of guilty construed as applying to both; cumulative sentences proper. **Bishop**, 21 A. 236, 94 S. E. 49.

.. 11-19.

Impending attack, statute not violated by one who, for defense against, took and used another's pistol while in that person's house. **Amos**, 13 A. 141, 78 S. E. 866.

Meaning of "home or place of business." **Coker**, 12 A. 425, 76 S. E. 103, 991; **Idelett**, 14 A. 501, 81 S. E. 379; **Smith**, 14 A. 823, 82 S. E. 355. **Boyd**, **Cheney**, 10 A. 451, 73 S. E. 551, 617; **Miller**, 12 A. 479, 77 S. E. 653. Meaning of "carry." **Cosper**, 13 A. 306, 79 S. E. 94.

Minor under 18 years of age can not legally carry pistol, either with or without license. **Glean**, 10 A. 128, 72 S. E. 927.

Momentary carrying when suddenly found necessary in defense of self, family, or property, not unlawful. **Harris**, 15 A. 315, 85 S. E. 813; **Williams**, 15 A. 312, 82 S. E. 817. No such emergency here. *Ib.* Statute not violated by mere temporary handling of pistol; it applies to carrying which is more or less habitual. **Cosper**, 13 A. 303, 304, 306, 79 S. E. 94.

Ownership of pistol, immaterial, except when. **Gates**, 12 A. 706, 78 S. E. 270.

Presumption where one has pistol not at his home or place of business; no error in charge of court as to. **Hardison**, 18 A. 693, 90 S. E. 374.

Prima facie case made by proof of carrying pistol; burden on accused to show that it was at his home or place of business. **Harris**, 14 A. 521, 81 S. E. 587; **Webb**, 18 A. 44, 88 S. E. 751; **Elkins**, 17 A. 479, 87 S. E. 713. Prima facie case made by proof that accused carried on his person or had manual possession of pistol not at his home or place of business; burden on accused to show license or other defense. **Blocker**, 12 A. 81, 76 S. E. 784; **Williams**, 12 A. 84, 76 S. E. 785; **Russell**, 12 A. 557, 77 S. E. 829.

Punishment not legally excessive. **Myrick**, 13 A. 625, 79 S. E. 580.

Purpose of carrying considered; intent a question for jury. **Cosper**, 13 A. 303, 304, 306, 79 S. E. 94. Purpose

of carrying immaterial. **Harris**, 15 A. 318, 85 S. E. 813.

Reasonable construction to be given statute as to: **Coker**, 12 A. 425, 76 S. E. 103, 991; **Jackson**, 12 A. 427, 77 S. E. 371; **Amos**, 13 A. 141, 78 S. E. 866; **Cosper**, 13 A. 301, 79 S. E. 94; **Smith**, 14 A. 823, 82 S. E. 355; **Hansford**, 14 A. 810, 82 S. E. 376; **Harris**, 15 A. 315, 85 S. E. 813; **Webb**, 18 A. 44, 88 S. E. 751.

Rented premises, not "place of business" of landlord, under law as to. **Reagan**, 16 A. 369, 85 S. E. 353.

Road, statute violated by carrying along, though defendant was only carrying pistol to owner, who had left it at defendant's home. **Cheney**, 10 A. 451, 73 S. E. 617. Not violated by one who found pistol in road and carried it to his home to keep it there until called for by owner. **Cosper**, 13 A. 303, 304, 306, 79 S. E. 94.

Search of person, admissibility of evidence obtained by. **Pitts**, 14 A. 283, 80 S. E. 510. Evidence as to discovery of pistol by illegal search of person, not admissible. **Brown**, 15 A. 484, 83 S. E. 890.

State not required to negative existence of license. **Sims**, 12 A. 363, 77 S. E. 188.

Statement of defendant at trial, whether prima facie case overcome by, was jury question. **Elkins**, 17 A. 479, 87 S. E. 713.

Store of another, one carrying pistol to, from his residence, for purpose of pawning it, violated statute. **Usry**, 17 A. 268, 86 S. E. 417.

Tenant on farm, when house occupied by laborer as, may be considered home of his brother sleeping there part of each week and working for a different landlord; landlord's consent not necessary. **Smith**, 14 A. 823, 82 S. E. 355.

Wife, statute not violated by one who, to prevent adultery by, procured a pistol immediately on finding her with her paramour, and returned and shot him. **Harris**, 15 A. 315, 85 S. E. 813.

Pistol dealer failing to register business; indictment and proof sufficient. **Debba**, 8 A. 731, 70 S. E. 101.

Playing and betting for money or valuable thing, not shown, where each player "chipped in" the price of a milk-shake which he was to have. **Simmons**, 106/355, 32 S. E. 339.

Pointing weapon at another, when unlawful. **Edwards**, 4 A. 159, 60 S. E. 1033; **Long**, 127/350, 56 S. E. 444.

Charge sufficient as to intention. Intention to shoot, not essential to conviction. Language no justification. **Winkles**, 114/449, 40 S. E. 259.

Charge to jury as to, proper; conviction warranted. **Linder**, 17 A. 310, 86 S. E. 741.

Conviction warranted by evidence. **Hill**, 4 A. 171, 60 S. E. 1014; **Kelly**, 14 A. 20, 80 S. E. 24.

Facts authorizing conclusion that a gun was intentionally pointed at another. **Clonts**, 18 A. 707, 90 S. E. 373.

Accusation of pointing at A and B, not sustained by proof of pointing at A and D. **Bone**, 11 A. 128, 74 S. E. 852.

"Aim," and "point," defined and distinguished; "aim" implies intent; omission of "intentionally," in charging jury, not error here. **Livingston**, 6 A. 805, 806, 65 S. E. 812.

Conviction of, under indictment for assault with intent to murder. **Livingston**, 6 A. 208, 805, 64 S. E. 709; 65 S. E. 812. When no error in omitting charge on assault to murder, though included in indictment. *Id.*

In making arrest, unlawful, when. **Reynolds**, 9 A. 227, 70 S. E. 969.

Intention to point, inferred from circumstances. **Hawkins**, 8 A. 705, 70 S. E. 53.

Irrelevant testimony on trial for; motive immaterial. **Gossett**, 6 A. 439, 441, 65 S. E. 162.

Merged into assault to murder, under evidence here; city court without jurisdiction; reversal with direction. **Eberhart**, 5 A. 174, 62 S. E. 730.

Necessary allegations and proof; motive immaterial where pointing is

intentional; sufficient evidence as to intent to point. *Parsons*, 16 A. 212, 84 S. E. 974.

Loaded or unloaded, a crime. *Toomer*, 130/66, 60 S. E. 198.

Unlawful; grade of homicide, where pistol is discharged. *Leonard*, 133/435, 66 S. E. 251.

Unintentional shooting while pointing, involuntary manslaughter in commission of unlawful act. *Irvin*, 9 A. 865, 72 S. E. 440. See *Berry*, 9 A. 868, 72 S. E. 433.

Poisoning spring or well of water. *Peebles*, 101/585, 28 S. E. 920. Poisoning well with bluestone, conviction supported. *Boswell*, 114/40, 39 S. E. 897.

Attempt to poison, not assault with intent to murder, when. *Leary*, 13 A. 628, 79 S. E. 584; *Leary*, 14 A. 797, 82 S. E. 471. Poison not administered unless the intended victim partakes of it. *Ib.*

Admissibility of evidence on trial for murder by, as to poisoning of others. *Cawthon*, 119/408, 46 S. E. 897.

Pool table; see catchword, Billiard.

Possession of land under forged conveyance; actual possession necessary to violation of § 252 of Penal Code (1910), as to taking possession, occupying, or exercising acts of ownership, etc. Mere verbal claim, attempt to sell, or sale, not sufficient. *Davis*, 20 A. 68, 92 S. E. 550; *Weathers*, 20 A. 71, 92 S. E. 552.

Prescribing alcohol unlawfully. *Gaskins*, 17 A. 807, 88 S. E. 592.

Products sold by planters and commission merchants, failing to pay for, and making away with, or disposing of. Law violated though worthless check was given in payment. *Moore*, 12 A. 576, 77 S. E. 1132.

Sold by planters; cotton made away with by transfer of bill of lading. *Moore*, 12 A. 576, 77 S. E. 1132. Venue of offense. *Ib.*

Profane language in presence of female, act making penal, constitutional by Code of 1895. Knowledge of female's presence must be chargeable to accused. *Parks*, 110/761, 36 S. E. 73.

Not shown to have been used without provocation, nor that defendant knew of female's proximity, conviction illegal. *Hardin*, 114/58, 39 S. E. 879.

Alone will not constitute an affray. *Blackwell*, 119/314, 46 S. E. 432.

Property, malicious injury to; facts warranting conviction; proper charge to jury. *Woods*, 10 A. 476, 73 S. E. 608. Public building, church is not, within meaning of Penal Code, § 777. *Collum*, 109/531, 35 S. E. 121.

Definition of "public building," includes town calaboose, without reference to the ownership of the property; but if indictment alleges ownership, it must be proved. *Shepherd*, 16 A. 248, 85 S. E. 83.

Used for indecent purpose by urinating against door-facing of court-house. a misdemeanor though no injury or defacement. *Smith*, 110/292, 35 S. E. 166.

Public gathering defined. *Wynne*, 123/566, 51 S. E. 636.

Public indecency, what necessary to constitute. *Morris*, 109/351, 34 S. E. 577.

"Public place," meaning of, in prohibition law of 1907, and in other connections. *Tooke*, 4 A. 496, 505, 61 S. E. 917. See *Roberts*, 4 A. 207, 60 S. E. 1082; *Jenkins*, 4 A. 859, 62 S. E. 574; *Griffin*, 15 A. 552, 83 S. E. 871.

What constitutes, in law as to affrays. *Gamble*, 113/701, 39 S. E. 301.

Railroad, law as to obstructing, discussed in connection with law as to wrecking trains, cars, etc. *Wilson*, 19 A. 759, 92 S. E. 309; *Gunter*, 19 A. 772, 92 S. E. 314.

By placing iron rail thereon. *Sanders*, 118/329, 45 S. E. 365.

Railroad car, breaking, entering, and stealing from. *Beaheres*, 12 A. 805, 78 S. E. 483. A single offense. *Berry*, 124/825, 53 S. E. 316.

Broken and entered, and liquor in course of interstate transportation stolen; conviction warranted. *Gates*, 20 A. 171, 92 S. E. 974. Constitutional question not properly raised; and no merit in the point. *Ib.*

Broken and entered; proof as to ownership. **Adkins**, 115/582, 41 S. E. 987.

Breaking into; conviction warranted by circumstantial evidence here. **Moore**, 14 A. 256, 80 S. E. 507.

Breaking and entering; sufficiency of indictment as to ownership of car, and of evidence as to breaking and place where accomplished. **Gilbert**, 116/819, 43 S. E. 47.

Breaking and entering; evidence not sufficient to convict. **Williams**, 11 A. 723, 75 S. E. 1135; **Thomas**, 8 A. 95, 68 S. E. 522.

Breaking, conviction warranted. **Smith**, 6 A. 577, 65 S. E. 300.

May be dwelling-house, within meaning of law, as to burglary, when used exclusively for habitation. **Gibbs**, 8 A. 107, 68 S. E. 742.

Other than that to which assigned remaining in. Refusal to leave it, on conductor's order, makes offense, though sole purpose in entering was to pass through. **Brown**, 110/771, 36 S. E. 68.

Railroad train, attempt to wreck; conviction warranted. **Henderson**, 5 A. 495, 63 S. E. 535.

Law of murder, charged on trial of wrecking. Declarations of accused, and other evidence, admissible. **Shaw**, 102/660, 29 S. E. 477.

In law as to wrecking, "railroad" includes street-railroads operated by electric power. **Wilson**, 19 A. 759, 92 S. E. 309. **Gunter**, 19 A. 772, 92 S. E. 314.

Circumstantial evidence sufficient for conviction of wrecking. **Murphy**, 118/780, 45 S. E. 609.

Evidence warranting conviction of attempt to wreck. **Dalton**, 113/1037, 39 S. E. 468. Proof of railroad company's possession of track sufficient, as to ownership. **Turner**, 10 A. 18, 72 S. E. 604. Immaterial that Georgia Railroad was corporation. **Wilson**, 10 A. 67, 72 S. E. 605. Facts warranting conviction. **Turner**, 10 A. 18, 72 S. E. 604.

Whether offense was attempt to wreck, or obstructing railroad, a jury question. **Hobbs**, 8 A. 533, 68 S. E. 515.

Relevant testimony on trial of one indicted for wrecking street-car with dynamite. **Wilson**, 19 A. 759, 92 S. E. 309; **Gunter**, 19 A. 772, 92 S. E. 314.

Rocking passenger-train by throwing rock into street-car occupied by passengers. **Bray**, 118/786, 45 S. E. 597.

Whether defendant intended to wreck car, or only to obstruct or injure track, a jury question; testimony admissible to elucidate intent. **Gunter**, 19 A. 774, 92 S. E. 314.

Stealing ride on; drunkenness no excuse; one sober enough to try to hide, is able to form guilty intent. Where one without fare or ticket was ordered to leave train, and, after opportunity to leave, was found crouching down between seats, he could be convicted. **Brazzell**, 119/559, 46 S. E. 837.

Attempt to steal ride on, by concealing self, misdemeanor. **Southern R. Co.**, 114/184, 39 S. E. 883.

Wanton or intentional killing by, evidence sufficient to show. **Southern Ry. Co.**, 7 A. 244, 66 S. E. 627.

See catchword, **Sunday**.

Rape, aiding an attempt of. **Bishop**, 115/802, 45 S. E. 614.

Assault must be charged on, when, on trial for. **Small**, 6 A. 502, 65 S. E. 295.

Omission of instructions on assault, or assault and battery, not error here. **Marshall**, 20 A. 72, 92 S. E. 552. Conviction of assault with intent to rape, under indictment for rape, legal, though the indictment did not allege assault. **Harris**, 21 A. 75, 94 S. E. 75. Conviction of assault and battery, not proper, where indictment does not charge battery. **Owens**, 9 A. 444, 71 S. E. 680. Conviction of simple assault proper here. **Campbell**, 10 A. 795, 74 S. E. 96. Errors not so material as to require that conviction of assault be set aside. **Turner**, 9 A. 8, 70 S. E. 194. Evidence not warranting charge to jury as to simple assault. **Roberts**, 9 A. 810, 72 S. E. 287. Evidence showing rape will not support verdict of assault with intent to rape. **Harris**, 101/530, 29 S. E. 423. Instruc-

tion to jury, on assault and battery, when required; sufficient instructions. *McCullough*, 10 A. 403, 73 S. E. 546.

No proper submission of assault and battery, where defendant relied on alibi and State's evidence made case of assault with intent to rape. *Langston*, 23 A. 82, 97 S. E. 444. Proper charge to jury on trial for, as to assault and battery. *Glover*, 23 A. 520, 98 S. E. 553.

Bastardy, whether child was begotten in rape, immaterial, on trial for. *Kennedy*, 9 A. 219, 70 S. E. 986.

Battery, no error in omitting charge as to. *Roberts*, 9 A. 810, 72 S. E. 287. Rape includes battery; not every assault to rape does. *Goldin*, 104/549, 30 S. E. 749.

Capacity and credibility of female child of eight years as a witness. *Frazier*, 143/322, 85 S. E. 124. Question of defendant's age and capacity to commit, for jury. *Gaines*, 120/137, 47 S. E. 571. Incapability of child between twelve and fourteen years to consent to sexual act. *McCombs*, 148/304, 96 S. E. 385.

Charge to jury that a man who in lust "lays his hand upon a girl" under the age of ten years, with intent to have carnal knowledge of her, and attempts to do so, is guilty, if he fails to complete the act; not error. *Williams*, 15 A. 306, 82 S. E. 938. Charge of court as to testimony of prosecutrix, and corroboration, considered. *Ryals*, 125/266, 54 S. E. 168. Charge of court as to rape, discussed; error in, not harmful here. *Black*, 119/746, 47 S. E. 370. Error in refusing to charge jury that the accused would not be guilty if he intended to desist "as soon as he found out that [the woman] would not consent;" also in not giving other instructions requested as to intent. *Fite*, 11 A. 692, 76 S. E. 297. Error in charge as to testimony of prosecutrix, and circumstances tending to give probability to it. *Smalls*, 6 A. 502, 65 S. E. 295.

Child, proper instructions where the female was. *Wade*, 11 A. 411, 412, 75 S. E. 494. Charge of court referring

to the female as "this child," not error here. *Id.*

Circumstances tending to negative charge of rape. *Avery*, 12 A. 562, 77 S. E. 892.

Color and social status, difference in, as affecting question of intent. *McCullough*, 11 A. 612, 76 S. E. 393; *Fite*, 11 A. 692, 76 S. E. 397.

Complaint by female; error in expression or intimation of opinion in charge to jury. *Jeffers*, 143/849, 85 S. E. 1005. When not admissible. *Jackson*, 20 A. 721, 93 S. E. 230; *Lane*, 140/222, 78 S. E. 837; *Allen*, 140/479, 79 S. E. 29. When admissible, and when not. *Huey*, 7 A. 405, 66 S. E. 1023; *Webb*, 7 A. 37, 66 S. E. 27.

Confession, statements not amounting to. *Huey*, 7 A. 405, 66 S. E. 1023.

Consent, proper instructions as to. *Avery*, 12 A. 562, 77 S. E. 892. Rape not committed if female finally consent though under physical force. *Mathews*, 101/547, 29 S. E. 424. Ability to consent to criminal act. *Morrow*, 13 A. 189, 79 S. E. 63. Consent, when no defense in rape case. *Gore*, 119/419, 46 S. E. 671, 170 Am. St. R. 182. Consent of female; issue of want of capability not raised, no charge to jury on burden of proof. *Joimer*, 133/433, 66 S. E. 251. Issue of capacity to consent; girl's physical and mental development considered. *Jones*, 106/365, 34 S. E. 174.

Reluctance to submit to sexual intercourse does not make rape if consent given. *Taylor*, 110/151, 35 S. E. 161.

Conversations with others after alleged assault, admissibility of testimony of prosecutrix as to. Explanation of failure to make prompt complaint. *Coppedge*, 22 A. 631, 96 S. E. 1046.

Corroboration of testimony of victim. *Washington*, 138/370, 75 S. E. 253. *Lane*, 140/222, 78 S. E. 837. Not sufficient. *Davis*, 120/433, 48 S. E. 180.

Corpus delicti not shown by particulars of complaint, not a part of *res gestæ*, and by confession uncorroborat-

ed by other evidence. **Huey**, 7 A. 398, 66 S. E. 1023.

Credit of prosecutrix in trial for rape, evidence authorized conviction. **Jackson**, 132/546, 64 S. E. 653. Rape, and assault with intent; credit and corroboration of injured female. **Fields**, 2 A. 41, 58 S. E. 327.

Daughter, rape of, by father; evidence sustained conviction. **Buchanan**, 137/774, 74 S. E. 536; **Powers**, 138/624, 75 S. E. 651.

Definition of rape. **Gore**, 119/419, 46 S. E. 671, 100 Am. St. R. 182. Rape defined; meaning of "force;" non-resistance due to fear is not consent; corroboration of the female, whether necessary. **Vanderford**, 126/757, 759, 55 S. E. 1025.

Delay in having accused arrested, when may be shown to impeach witness. **Merritt**, 107/675, 34 S. E. 361.

Evidence and instructions to jury on trial for rape. **Hamilton**, 143/265, 84 S. E. 583. Admissibility of evidence on trial for. **Chambers**, 141/652, 81 S. E. 880. Rape shown, and no evidence of assault thereto, short of actual commission. **Welborn**, 116/522, 42 S. E. 773. Rape shown by testimony of victim, with corroborating evidence. **Jeffers**, 145/74, 88 S. E. 571. Rape, not adultery and fornication, shown by evidence, direction that defendant be held to await action of grand jury. **Nephew**, 5 A. 844, 63 S. E. 916. Evidence of accused jointly tried. **Staten**, 140/110, 78 S. E. 766.

Evidence warranting conviction. **Black**, 119/746, 751, 47 S. E. 370; **Ryals**, 125/266, 54 S. E. 168; **Johnson**, 128/102, 5 S. E. 353; **Webb**, 133/585, 66 S. E. 784; **Merritt**, 134/264, 67 S. E. 797; **Moreland**, 134/268, 67 S. E. 804; **Jackson**, 134/473, 68 S. E. 71. **Graham**, 134/536, 68 S. E. 186; **Powers**, 138/624, 75 S. E. 651; **Jones**, 138/813, 76 S. E. 358; **Brown**, 138/814, 76 S. E. 379; **Burger**, 139/108, 76 S. E. 863; **Lane**, 140/22, 78 S. E. 837; **Davis**, 144/54, 85 S. E. 1005; **Head**, 144/383, 87 S. E. 273. **Lavender**, 9 A. 856, 72 S. E. 437; **Poole**, 22 A. 248,

95 S. E. 935; **Chance**, 22 A. 253, 95 S. E. 876

Evidence insufficient to warrant conviction. **Cheney**, 109/503, 35 S. E. 153; **Smith**, 146/103, 90 S. E. 707. **Huey**, 7 A. 398, 66 S. E. 1023.

Exclusion of public from trial. **Tilton**, 5 A. 63, 62 S. E. 651.

Force, meaning of, in law of rape. **Vanderford**, 126/758, 55 S. E. 1025.

Former rape; inadmissible testimony as to. **Webb**, 7 A. 37, 66 S. E. 27.

Identity gravely doubtful; alibi strongly supported; newly discovered evidence demanded new trial. **Fellows**, 114/233, 39 S. E. 885. Rape shown by prosecutrix, corroborated by evidence of identity of accused, as against defense of alibi, etc. **Canida**, 130/15, 60 S. E. 104.

Imbecile female, non-resisting, mentally incapable of expressing intelligent assent or dissent, rape committed by sexual intercourse with. **Gore**, 119/418, 46 S. E. 671, 100 Am. St. R. 182.

Intent, evidence as to, unsatisfactory to Court of Appeals, but sufficient to authorize jury to convict. **Roberts**, 9 A. 807, 72 S. E. 287. Issue as to whether intent was to have sexual intercourse with child, or merely to use her body in an abnormal manner. **Williams**, 15 A. 306, 82 S. E. 938.

Intoxication, use of drugs, sleep, etc., rape on one whose will is temporarily lost from. **Gore**, 119/419, 46 S. E. 671, 100 Am. St. R. 182.

Leading questions to girl in her thirteenth year, as to details of, allowed. **Wade**, 13 A. 142, 78 S. E. 863.

Lewdness of the female, admissibility and effect of evidence as to. Proof of specific acts not admitted. **Black**, 119/747, 748, 750, 47 S. E. 370.

Liquor, proof that defendant was under influence of, at time of assault, admissible, to show reckless condition of mind. **Roberts**, 9 A. 811-11, 72 S. E. 287.

Lunatic, rape on, without resistance. **Gore**, 119/418, 46 S. E. 67, 100 Am. St. R. 182.

Presumption of incapacity of girl under ten years of age to consent. *Williams*, 15 A. 308, 82 S. E. 938.

Saying of Lord Hale that rape is a charge easily made, hard to be proved, harder still to be defended, is not a proper instruction by court to jury. *Black*, 119/746, 47 S. E. 370. See *Chivers*, 5 A. 658, 63 S. E. 703.

Settlement of prosecution for rape, desired, brought out on cross-examination of the female. *Huff*, 106/432, 32 S. E. 348.

Sleeping woman who had not consented, rape by carnal knowledge of; and of imbecile female. *Brown*, 138/814, 76 S. E. 379.

Statements constituting part of res gestæ. *Williams*, 15 A. 306, 310, 82 S. E. 938.

Subsequent conduct of prosecutrix; admissibility of her testimony as to reasons for remaining at defendant's house after assault. *Roberts*, 9 A. 810, 72 S. E. 287.

Unchaste character of woman, evidence of, relevant not only on credibility but on whether she consented. *Seals*, 114/518; 40 S. E. 731, 88 Am. St. R. 31.

See catchwords, *Assault with intent to rape*.

Receiving stolen goods a distinct crime. Facts showing guilt of principal thief must be proved on trial of accessory. *Wright*, 1 A. 158, 57 S. E. 1050.

Charge of court as to, discussed. *Blumenthal*, 121/477, 49 S. E. 597.

Circumstances not authorizing conviction. *Casper*, 22 A. 126, 95 S. E. 534.

Conviction not authorized without proof that the goods were stolen. *Lemon*, 18 A. 689, 90 S. E. 368.

Conviction not warranted. *Stewart*, 13 A. 452, 79 S. E. 225.

Conviction not upheld on proof that accused held and secreted them after information of theft. Knowledge must be present when goods are received. *Pat*, 116/92, 42 S. E. 389.

Conviction of one charged with the original theft, not conclusive but prima

facie evidence of his guilt, on trial of one charged with receiving. *Snow*, 5 A. 608, 63 S. E. 651.

Conviction on uncorroborated testimony of actual thief. *Springer*, 102/448, 30 S. E. 871.

Corroboration of accomplice; law not applied to misdemeanor. *Davis*, 23 A. 5, 97 S. E. 263.

Effect of evidence of character of accused in defense to charge of. *Culver*, 124/822, 53 S. E. 316.

Evidence not sufficient to show knowledge that they were stolen. *Williams*, 16 A. 698, 85 S. E. 973.

Evidence showing guilt of, no basis for conviction of burglary. *Gravitt*, 114/841, 40 S. E. 1003, 88 Am. St. R. 63. Evidence insufficient to show guilt beyond reasonable doubt. Record of conviction and sentence of principal thief puts burden on accused. *Stripland*, 114/843, 40 S. E. 993.

Facts here did not authorize charge as to, on trial of one accused of larceny from house. *Hargrove*, 117/708, 45 S. E. 58.

Guilty knowledge not sufficiently shown, conviction set aside. *Sanford*, 4 A. 449, 61 S. E. 741; *Murray*, 4 A. 450, 61 S. E. 741.

Instruction to jury, omitting reference to knowledge, not subject to exception here. *Williams*, 16 A. 698, 85 S. E. 973. Necessary instructions to jury; admissibility of evidence. *Thompson*, 16 A. 832, 84 S. E. 591.

Principal thief no accomplice. Guilty knowledge, how inferred. *Birdsong*, 120/850, 854, 48 S. E. 329, 330.

Whether one knowingly receiving was an accomplice, a jury question. *Wilson*, 8 A. 816, 70 S. E. 193.

Presumption from possession, rebutted. *Sanford*, 4 A. 449, 61 S. E. 741.

Necessary proof as to conviction of principal thief, etc., proof not required as to precise time of conviction, when. Instructions to jury as to, considered. *Belton*, 21 A. 792, 95 S. E. 299.

Whether felony or misdemeanor, depends on degree of original thief's of-

fense, as shown by facts in evidence on trial of party receiving. *Snow*, 5 A. 608, 63 S. E. 651.

Reckless driving, not "indecent" conduct.

Davis, 14 A. 569, 81 S. E. 906.

"Rencounter;" mutual combat not implied by this word, in charge to jury. *Mulligan*, 18 A. 470, 89 S. E. 541.

Riot charged in city court, evidence showing assault with intent to murder, new trial granted, and accused held to await action of grand jury. *Oglesby*, 1 A. 195, 57 S. E. 938.

Requires participation of more than one person. *Phenix Ins. Co.*, 16 A. 261, 85 S. E. 206.

When one person can not be convicted, of; error in refusing new trial to one of joint defendants, while granting new trial to others. *Lewis*, 5 A. 496, 68 S. E. 570.

Common intent and joint action of at least two, necessary to constitute, evidence not supporting conviction. *Dixon*, 105/787, 31 S. E. 750; *Hunter*, 127/43, 55 S. E. 1044.

Common intent not shown, conviction set aside. *Croy*, 4 A. 457, 61 S. E. 847.

Must be concert of action in furtherance of common intent. *Coney*, 113/1060, 39 S. E. 425; *Jemley*, 121/346, 49 S. E. 292; *Grier*, 11 A. 767, 76 S. E. 70. But previous conspiracy not necessary. *Jemley*, 121/346, 49 S. E. 292; *Grier*, 11 A. 767, 76 S. E. 70.

Three participants in, at night, cursing, threatening, and firing gun, conviction supported. *Lewis*, 2 A. 659, 58 S. E. 1070.

Conviction of assault, under indictment for assault to murder, legal though in committing the assault the defendant was guilty also of riot. *Smallwood*, 9 A. 300, 70 S. E. 1124. Conviction warranted. *Guthrie*, 9 A. 623, 71 S. E. 944.

Essential elements of; concert of action in furtherance of common intent, inferable from manner of committing unlawful act; facts authorizing conviction. *Walker*, 17 A. 525, 87 S. E. 711.

Joint acts constituting. *Kilcrease*, 21 A. 803, 95 S. E. 271.

Evidence authorized conviction. *Johnson*, 124/656, 52 S. E. 880; *Kilcrease*, 21 A. 803, 95 S. E. 271; *Oglesby*, 12 A. 684, 78 S. E. 134; *Hunt*, 116/615, 42 S. E. 1004. Title of accused to premises, when irrelevant. *Id.* 616.

Intent inferred from manner in which act was done. *Grier*, 11 A. 767, 76 S. E. 70.

Shooting at house and occupant, by one of three persons assembled outside, and at suggestion of one of them; conviction of riot sustained. *Walker*, 17 A. 525, 87 S. E. 711.

Facts not showing, but indecent conduct in violation of other laws. Common intent and concert of action, both necessary to constitute. *Stanfield*, 1 A. 532, 57 S. E. 953.

No legal conviction of, without evidence of commission of the act in concert or as result of conspiracy with others. *Turner*, 120/850, 48 S. E. 312.

What constitutes; both violence and tumult are necessary to convert a lawful act into riot; proper instructions to jury as to. *Taylor*, 8 A. 241, 68 S. E. 945.

See catchword, Intent.

Robbery, admission not amounting to confession of. *Reed*, 15 A. 436, 83 S. E. 674.

Aiding and abetting. *Hines*, 16 A. 414, 85 S. E. 452. Evidence sufficient to show that defendant was aiding and abetting; defense that he acted under coercion, not sustained. *Pirkle*, 11 A. 98, 74 S. E. 709.

Allegation that "lawful money," was taken sustained by proof that "green-back money," was taken. *Jones*, 10 A. 59, 72 S. E. 518.

Assault with intent to rob, conviction warranted. *Jackson*, 17 A. 270, 86 S. E. 459. Conviction set aside. *Erwin*, 117/296, 43 S. E. 719.

Attempt at, not shown by preparatory acts. *Groves*, 116/516, 42 S. E. 755, 59 L. R. A. 598.

Charge as to force, error, where evidence showed intimidation, not force. *Grant*, 125/259, 54 S. E. 191. Instruction to jury, as to indictment in two

counts, that the second count was "applicable to the facts," not prejudicial, especially in view of other instructions. *Jones*, 18 A. 8, 89 S. E. 342.

Robbery by force and by intimidation charged; proper instructions to jury. *Harrison*, 12 A. 552, 77 S. E. 830. Error in charging jury as to robbery, harmless here. *Gant*, 115/205, 41 S. E. 698. Exceptions to charge of court, not well taken. *Green*, 9 A. 570, 71 S. E. 875. Charge of court, where indictment was in two counts, one alleging robbery by force, and the other robbery by intimidation, not harmful in limiting consideration to the former, under the facts here. *Moore*, 17 A. 344, 86 S. E. 822. Charge of court restricting jury to consideration of robbery by force, not error, under evidence here. *Yates*, 17 A. 313, 86 S. E. 741. Charge of court as to assault and battery, not ground for reversal, in case of one convicted of robbery. *Black-shear*, 20 A. 87, 92 S. E. 547.

Circumstances not warranting conviction. *Couch*, 17 A. 346, 86 S. E. 822; *Mauldin*, 17 A. 346, 86 S. E. 782. Circumstances authorizing conviction of robbery by force, in taking a watch, money, etc., from an unconscious person. *Bowen*, 16 A. 110, 84 S. E. 730.

Corroboration of accomplice, what necessary; circumstances here were not sufficient corroboration. *Stokes*, 19 A. 235, 91 S. E. 271. Evidence corroborative of testimony of prosecutor. *Clay*, 122/136, 50 S. E. 56.

Essentials of. *Hartford Ins. Co.*, 12 A. 712, 78 S. E. 265.

Evidence weak, but sufficient to convict. *Read*, 13 A. 170, 78 S. E. 1023. Conviction warranted. *Costin*, 16 A. 408, 85 S. E. 617; *Shields*, 16 A. 680, 85 S. E. 1057; *Green*, 9 A. 570, 71 S. E. 875; *Reed*, 15 A. 436, 83 S. E. 674; *Nelms*, 18 A. 92, 88 S. E. 917. Facts did not show robbery. *Johnson*, 1 A. 729, 57 S. E. 1056.

Force, what sufficient to constitute robbery by. *Bowen*, 16 A. 110, 84 S. E. 730. Robbery by force may be committed on one who is uncon-

scious; such robbery distinguished from robbery under act of 1903. *Ib.* See *Hines*, 16 A. 413, 414, 85 S. E. 452. Force as an element of, resistance not necessary. *Moran*, 125/33, 53 S. E. 806; *Hickey*, 125/145, 53 S. E. 1026; *Pride*, 126/748, 750, 54 S. E. 686, 688. Sudden snatching is robbery by force under act of 1903. *Hickey*, 125/145, 53 S. E. 1026; *Pride*, 125/748, 750, 54 S. E. 686, 688. Robbery by force, though article worth but a few cents. *McDow*, 110/293, 34 S. E. 1019. Robbery by force, following detected attempt of larceny from person. *Carter*, 3 A. 477, 60 S. E. 216. Robbery by force; both of accused guilty of this grade where one coerced submission by pointing pistol, while the other took money from pockets. *Harris*, 1 A. 136, 57 S. E. 937. Robbery by force and intimidation; verdict for either or both grades, as shown by evidence. *Carter*, 3 A. 477, 60 S. E. 216.

Identification of person, sufficiency of evidence as to. *Ball*, 9 A. 162, 165, 70 S. E. 888.

Inspection, one receiving gun from owner for, and then depriving him of it by intimidation, guilty. *Grant*, 125/259, 54 S. E. 191.

Intimidation, robbery by, shown by direct evidence of intimidation, and circumstantial evidence as to acquisition of property thereby. *Jackson*, 17 A. 269, 86 S. E. 459. Error in charging as to robbery by intimidation, where the evidence showed it was by force if committed at all. *Jaques*, 111/832, 36 S. E. 104.

Loser of money at cards, compelling winner to surrender other money with winnings, guilty. Not robbery to compel surrender of winnings alone. *Gant*, 115/206, 41 S. E. 698.

Passengers on train, conviction of robbing. *Nolan*, 14 A. 824, 82 S. E. 377.

Pocket, taking purse from, was not robbery, but larceny from person. *Morris*, 125/36, 53 S. E. 564. Robbery committed by pulling another's hand from his pocket and taking his pocket-

book from the pocket, without his knowledge, while pretending to assist him to a platform. *Moran*, 125/33, 53 S. E. 806. See *Cole*, 125/35, 53 S. E. 807.

Presence, not person of owner, when taking from, is robbery. *Grant*, 125/260, 54 S. E. 191.

Principal in second degree, error in charge to jury as to what would render one guilty as. *Bryant*, 15 A. 535, 83 S. E. 795.

Sudden snatching, robbery by; elements of the offense; erroneous instruction to jury. *Moore*, 20 A. 190, 92 S. E. 963. No error in not charging jury on robbery by sudden snatching, where indictment alleged and evidence showed robbery by force, not snatching. *Woblington*, 17 A. 267, 86 S. E. 417. Robbery not result from suddenly snatching purse from hand of owner without intimidation or resistance. *Spencer*, 106/692, 32 S. E. 849. Robbery, not larceny from person, committed by jerking a purse attached to the owner's finger by a chain, which was thus broken. *Smith*, 117/320, 43 S. E. 736, 97 Am. St. R. 169. Robbery under act of 1903, by snatching or taking, without consent, distinguished from larceny from person; possessor must be conscious of taking, before complete. *Williams*, 9 A. 170, 70 S. E. 890. Suddenly snatching pistol and retaining possession by intimidation is not robbery. *Jackson*, 114/826, 40 S. E. 1001, 88 Am. St. R. 60. Error in giving in charge to jury the entire code-section as to robbery, in case of one indicted for robbery by force and intimidation; part as to robbery by sudden snatching was not applicable; error immaterial in view of instructions confining investigation to robbery by force and intimidation. *Blackshear*, 20 A. 87, 92 S. E. 547. Robbery defined in charge to jury, without including amendment by act of 1903, no error where no accusation of sudden snatching, etc. *Clay*, 122/136, 50 S. E. 56. Robbery by sudden snatching, taking, or carrying away money, un-

der act of 1903. *Fitzgerald*, 118/855, 858, 45 S. E. 666.

Sale of incumbered property. Bill of sale to secure debt, treated as "mortgage-deed," under Penal Code, § 720. *Farmer*, 18 A. 307, 89 S. E. 382.

Crop growing destroyed by storm, replanted crop not subject to lien of mortgage. *Hall*, 2 A. 739, 59 S. E. 26.

Cropper carrying part of crop to another county and there unlawfully disposing of it could be tried in the county from which he removed it; it could be inferred that he had the criminal intent when he carried it off. *Curry*, 17 A. 272, 86 S. E. 533.

Description in mortgage ("my crop of cottonseed raised for this year, 1916, on the William Gower farm, Polk county, Georgia"), sufficient, with the aid of parol testimony. *Cammon*, 20 A. 175, 92 S. E. 957. Description not sufficient ("all the cotton and cottonseed grown on three acres of cotton planted on Mrs. Johnson's farm"). *Miller*, 18 A. 487, 89 S. E. 607. Description of property too indefinite to be basis of prosecution; and description in mortgage different from description in accusation; error in not excluding mortgage from evidence. *Wyatt*, 16 A. 817, 81 S. E. 802.

Essential elements; conviction set aside, where no proof of intent to defraud, or of loss. *Wright*, 9 A. 442, 71 S. E. 500; *Farmer*, 18 A. 307, 89 S. E. 382; *Morrison*, 111/642, 36 S. E. 902.

Evidence insufficient to convict. *Ham*, 7 A. 57, 66 S. E. 22.

Fraudulent representation that no lien was on property, unlawful sale by; conviction warranted, though the lienholder orally consented to sale. *Mathis*, 14 A. 241, 80 S. E. 695. See *Bell*, 14 A. 425, 81 S. E. 253.

Incriminating statements of accused without aliunde evidence tending to prove corpus delicti, insufficient to convict. *Butler*, 9 A. 878, 72 S. E. 445.

Indictment alleging sale only, not supported by proof of loan; loan included in the terms "or otherwise dispose

of," in statute as to sale of crop by tenant. *Bugg*, 17 A. 221, 86 S. E. 405.

Indictment alleging that defendant did "sell or otherwise dispose of" crop, not supported by proof that he deposited it with another as security for a loan. *Gilbert*, 16 A. 249, 85 S. E. 86.

Intent to defraud must appear. *Morrison*, 111/642, 86 S. E. 902. Fraudulent intent essential; error in not charging as to intent. *Davis*, 7 A. 332, 66 S. E. 960. Inference as to fraudulent intent. *Smith*, 17 A. 554, 87 S. E. 829.

Loss shown by prosecutor's testimony that he lost "\$50, the value of the cows sold by the accused," was not a mere conclusion. *Farmer*, 18 A. 307, 89 S. E. 382. Sale of personal property covered by lien, when unlawful; error in charge to jury omitting element of loss essential to conviction. *Reece*, 5 A. 663, 63 S. E. 670. Conviction not supported, where evidence not sufficient to show loss. *Denny*, 2 A. 146, 58 S. E. 318.

Mortgaged animal unlawfully disposed of by killing and eating it. *Linder*, 17 A. 520, 87 S. E. 703.

Other acts than that charged, admissible to illustrate intent, when. *Wyatt*, 16 A. 817, 81 S. E. 802.

Prima facie presumption as to knowledge of defendant executing mortgage; no prejudicial error in charge of court as to. *Cammon*, 20 A. 175, 92 S. E. 957.

Proof as to sale of bull, not sufficient to show that it was the bull mortgaged. *Gibson*, 16 A. 265, 85 S. E. 199.

See catchword, *Loan*.

Seduction.

Abandonment, within statutory period after marriage to stop prosecution, not justified by groundless suspicion of adultery of wife. Whether suspicion was warranted was a jury question. *Arnold*, 15 A. 347, 83 S. E. 155.

Abortion, defendant's efforts to induce the taking of medicine to cause, relevant as tending to show carnal inter-

Seduction—(Continued).

course. *Odum*, 21 A. 312, 94 S. E. 257; *Parker*, 11 A. 252, 75 S. E. 437.

Accomplice, victim of seduction is not. *Washington*, 124/423, 52 S. E. 910; *Keller*, 102/507, 31 S. E. 92.

Argument, improper, by counsel for prosecution. *Parker*, 11 A. 252, 75 S. E. 437.

Improper, as to refusal of a witness to testify whether he had sexual intercourse with the woman alleged to have been seduced. *Boyett*, 16 A. 152, 84 S. E. 613.

Assault to prevent seduction not justified by facts. *Jordan*, 14 A. 430, 81 S. E. 359. Assault not to prevent, but in revenge, not justifiable; no error in so instructing jury. *Id.* 433-4.

Charge of court considered. *Washington*, 124/423, 52 S. E. 910; *Castleberry*, 21 A. 69, 94 S. E. 269; *Odum*, 21 A. 313, 94 S. E. 257.

Proper. *Pike*, 121/605, 49 S. E. 680.

No error here in omitting, as to what would constitute "other false and fraudulent means" to accomplish the crime. *Thomas*, 19 A. 105, 91 S. E. 247.

As to necessity for proof that the woman was virtuous and unmarried, not necessary, in absence of request, where the code definition of seduction was given in charge. *Mosley*, 16 A. 573, 85 S. E. 678.

That is was not a lawful defense for the accused "to blacken or blackball the character of his alleged victim" by proving, etc., error. *Thomas*, 19 A. 105, 91 S. E. 247.

Error in, not sufficient to require new trial. *Hembree*, 17 A. 117, 86 S. E. 286.

Correct. *Woodall*, 7 A. 245, 66 S. E. 619.

Giving entire code definition of seduction was not ground for reversal here, though the means alleged to have been employed to seduce did not include all of those named in the definition. *Thomas*, 19 A. 105, 91 S. E. 247.

Seduction—(Continued).

Child, no error here in excluding testimony as to. *Thomas*, 19 A. 105, 91 S. E. 247.

Birth of, and defendant's efforts to induce the taking of medicine to cause abortion, relevant as tending to show carnal intercourse. *Parker*, 11 A. 252, 75 S. E. 437.

Courtship, admissible testimony as to. *Boyett*, 16 A. 152, 84 S. E. 613.

Definition of seduction. *Dougherty*, 7 A. 92, 66 S. E. 276.

Different means of accomplishing seduction, and defenses. *Thomas*, 146/346, 91 S. E. 109.

Election to stop prosecution for seduction, effect of. *Griffin*, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 4 Ann. Cas. 866.

Evidence, admissibility of. *Washington*, 124/423, 52 S. E. 910.

That the female's mother was dead, and that a child was born, admissibility of. *Pike*, 121/605, 49 S. E. 680.

Authorizing conviction. *Boyett*, 16 A. 150, 84 S. E. 613; *Hays*, 16 A. 20, 84 S. E. 497; *Youmans*, 16 A. 196, 84 S. E. 833; *Moulton*, 18 A. 285, 89 S. E. 341; *Coldwell*, 21 A. 124, 94 S. E. 76; *Plumer*, 22 A. 269, 95 S. E. 873; *Woodcock*, 14 A. 541, 82 S. E. 633; *Potter*, 12 A. 315, 77 S. E. 186; *Woodall*, 7 A. 245, 66 S. E. 619; *Washington*, 124/423, 52 S. E. 910; *Nance*, 123/501, 51 S. E. 501; *Pike*, 121/605, 49 S. E. 680; *Wooten*, 23 A. 768, 99 S. E. 316; *McCall*, 23 A. 770, 99 S. E. 471.

Fear; seduction committed, although fear of bodily harm operated with begging and promise of marriage to cause the woman to yield to the first sexual intercourse. *Castleberry*, 21 A. 69, 94 S. E. 269.

Fornication, conviction of, under indictment for seduction, not alleging that defendant was unmarried. *Boggs*, 11 A. 92, 74 S. E. 716.

Facts not requiring charge to jury as to. *Morris*, 14 A. 396, 81 S. E. 257.

Seduction—(Continued).

One tried for seduction and convicted of fornication cannot complain that it was shown that the woman's consent was induced solely by promise of marriage. *Shattles*, 17 A. 259, 86 S. E. 463.

Seduction charged, fornication found, though committed over two years before indictment. *Jinks*, 114/431, 40 S. E. 320.

Good character of prosecutrix, admissibility of testimony as to. *Champion*, 21 A. 656, 94 S. E. 828.

Indictment for seduction, need not allege that accused was unmarried; nor need this be proved, if not alleged. *Jordan*, 120/865, 48 S. E. 352.

Of certain female associates of prosecutrix, testimony as to, admitted to discredit testimony as to her loose behavior while with them and the accused; not ground for reversal. *Thomas*, 19 A. 105, 91 S. E. 247.

Marriage, conviction after prosecution had been suspended by, and the wife had been abandoned within statutory period of five years. *Arnold*, 15 A. 347, 83 S. E. 155.

Seduction not committed where the intercourse is induced solely by promise of. *Shattles*, 17 A. 260, 86 S. E. 463.

Evidence and argument as to offer of; question by court, whether offer was still open, no error. *Keller*, 102/506, 31 S. E. 92.

Evidence as to the woman's preparations for, and her invitations to the wedding, admissible as tending to show engagement to marry. *Parker*, 11 A. 251, 75 S. E. 437.

Evidence need not show that definite date was fixed for. *Jinks*, 114/431, 40 S. E. 320.

Evidence of promises of, made after crime accomplished, admissible. *Jinks*, 114/431, 40 S. E. 320.

Facts constituting seduction, as distinguished from sharing in sexual intercourse solely on consideration of promise to marry if pregnancy

Seduction—(Continued).

ensues. *Cherry*, 112/871, 38 S. E. 341.

Inference that defendant was unmarried, authorized by his engagement or offer to marry. *Shattles*, 17 A. 259, 86 S. E. 463.

No presumption that one is or is not married; but the fact may be shown by circumstantial evidence. *Shattles*, 17 A. 259, 86 S. E. 463.

Stay of prosecution by offer of. *Cox*, 133/683, 66 S. E. 799.

Offer of, in order to stop prosecution, must be made before arraignment at first trial. *Parker*, 17 A. 252, 87 S. E. 705; *Jinks*, 114/431, 40 S. E. 320.

Sexual intercourse induced merely by promise to marry is mere fornication; aliter where the promise is to marry before a time previously set if "anything happens" from the intercourse. *Morris*, 14 A. 398, 81 S. E. 257.

Plea in abatement, that defendant's exercise of right to stop prosecution by offer to marry was prevented by the woman's marriage to another, not good. *Morris*, 14 A. 396, 81 S. E. 257.

Meretricious intercourse on promise of marriage, facts distinguishing from. *Boyet*, 16 A. 153, 84 S. E. 613; *Odum*, 21 A. 311, 94 S. E. 257; *Pough*, 7 A. 610, 67 S. E. 695; *Durrence*, 20 A. 193, 92 S. E. 962. Jury authorized to find that the intercourse was not meretricious, though partly induced by promise to marry in event of pregnancy. *Durrence*, 20 A. 193, 92 S. E. 962. Conviction of seduction, warranted by evidence, as against contention that only a meretricious contract appeared. *Hill*, 122/167, 50 S. E. 57.

Newly discovered evidence as to previous sexual intercourse with third person required new trial. *Dougherty*, 7 A. 92, 66 S. E. 276.

As to character of prosecutrix, cumulative, not require new trial. *Potter*, 12 A. 315, 77 S. E. 186.

Seduction—(Continued).

Conviction here not set aside because of. *Jinks*, 117/715, 44 S. E. 814.

"Persuasion," proper charge to jury as to; persuasion implied when. *Woodard*, 5 A. 447, 451, 63 S. E. 573.

Rape by the same person on the same woman, seduction may follow. *Castleberry*, 21 A. 69, 94 S. E. 269.

Reopening case, to allow proof of allegation of indictment, not error. *Odum*, 21 A. 312, 94 S. E. 257.

"Virtuous," a woman is, if she has never had sexual intercourse, though her mind be impure and men have taken liberties with her person. *Hays*, 16 A. 21, 84 S. E. 497; *Thomas*, 19 A. 104, 91 S. E. 247.

All women presumed to be, until contrary appears. *Woodard*, 5 A. 447, 63 S. E. 573.

Definition of "virtuous" unmarried female is matter of law for the court; includes any one who has never had unlawful sexual intercourse with man; moral purity not the test. *Woodard*, 5 A. 447, 63 S. E. 573. Test of virtue, physical, not moral chastity. *Washington*, 124/423, 52 S. E. 910.

Wife, competency of, as witness on trial of husband for seduction; act of 1899, amending Penal Code, § 379, construed. *Barnett*, 117/298, 43 S. E. 720.

Witness allowed to testify that persuasion was used, though unable to state what constituted the persuasion. *Hays*, 16 A. 21, 83 S. E. 497.

Entire testimony of, excluded, where he declined to answer certain questions because to do so might criminate himself. *Hays*, 16 A. 21, 83 S. E. 497; *Boyet*, 16 A. 151, 84 S. E. 613.

Testimony of, that he "knew" that the woman had sexual intercourse with a man, excluded. *Boyet*, 16 A. 151, 84 S. E. 613.

Failure of, to testify, as expected, that he had sexual intercourse with

the female, does not let in proof of his prior statement that he had. **Rickerson**, 106/391, 33 S. E. 639.

Shooting accidental. Error in not submitting theory of accident. **Jones**, 18 A. 285, 89 S. E. 303.

At house, when an assault. **Smallwood**, 9 A. 300, 70 S. E. 1124.

To frighten, when assault. **Smallwood**, 9 A. 300, 70 S. E. 1124.

In the direction of another, to frighten, not hit; when an assault, and when not. **Edwards**, 4 A. 167, 849, 60 S. E. 1033; 62 S. E. 565.

"At" or "into" dwelling; offense committed by person inside shooting at floor. **English**, 10 A. 791, 74 S. E. 286.

"At, forward, or into" dwelling (Acts 1910, p. 137); statute applies to any part of dwelling, and to one who shoots while on porch. **Sapp**, 17 A. 340, 86 S. E. 823.

"In car;" indictment; supported by proof of shooting on car, from step of platform. **Andrews**, 8 A. 700, 70 S. E. 111.

Into group of persons recklessly or wantonly, or shooting at one and hitting another, without provocation. **Duncan**, 141/4, 80 S. E. 317.

Into mob invading premises, when justifiable. **Rhodes**, 10 A. 68, 72 S. E. 518.

Not "indecently acting," under statute as to disturbance of worship, where in self-defense against felonious assault. **Cummings**, 8 A. 534, 69 S. E. 918.

Near highway; consent of owner of premises, no defense to prosecution under Penal Code § 504. **Rumph**, 119/121, 45 S. E. 1002. State must allege and prove that the shooting was not in defense of person or property. *Ib.*

On highway. evidence warranting conviction. **Chapman**, 7 A. 820, 68 S. E. 271.

On highway or within 50 yards, what necessary to make out case of. **Ferguson**, 1 A. 841, 58 S. E. 57. See **Wood**, 1 A. 685, 58 S. E. 271.

On Sunday; necessary instruction to jury as to. **Manning**, 6 A. 240, 64 S. E. 710.

Shooting at another.

Accidental shooting of neighbor at night by one attempting to prevent theft, evidence warranting rejection of theory. **Beddingfield**, 13 A. 624, 79 S. E. 581. Shooting at one and accidentally shooting another. **Wilson**, 13 A. 660, 79 S. E. 767.

Arrest, shooting to prevent. **Taylor**, 13 A. 716, 79 S. E. 924.

Without warrant, evidence authorizing conviction of one who shot at an officer attempting. **Stephens**, 17 A. 542, 87 S. E. 825.

Illegal, shooting at officer attempting. **Porter**, 124/297, 52 S. E. 283, 2 L. R. A. (N. S.) 730.

Illegal, shooting officer to prevent, is *prima facie* shooting at another. **Jenkins**, 3 A. 146, 59 S. E. 435.

Assault to murder or no crime, conviction upheld against objection that facts showed. **Justice**, 6 A. 330, 64 S. E. 1004. Shooting at another, not legal verdict, where the evidence demands conclusion that defendant was guilty of assault to murder, or not guilty at all. **Fallon**, 5 A. 659, 661, 63 S. E. 806.

Shooting at another distinguished from. **Hunter**, 10 A. 831, 74 S. E. 553; **Gaskin**, 11 A. 11, 74 S. E. 554. Evidence requiring charge to jury as to shooting at another on trial for. **Gaskin**, 11 A. 11, 13, 74 S. E. 554.

Error in failing to charge jury on, no ground for new trial to one convicted of lesser offense. **Coleman**, 15 A. 338, 83 S. E. 154.

Error, on trial for, in not charging jury as to offense of shooting at another. **Broughton**, 9 A. 820, 72 S. E. 276.

Though evidence of, almost overwhelming, verdict for shooting at another supported. **Wolfe**, 2 A. 684, 58 S. E. 1110.

Conviction authorized. **Humphrey**, 23 A. 5, 97 S. E. 275.

Shooting at another—(Continued).

Verdict, "guilty of shooting a man," not void for uncertainty. *Autrey*, 23 A. 148, 97 S. E. 753.

Burglar shooting at person detecting him, offense of shooting at another not involved. *Coney*, 101/582, 28 S. E. 918.

Charge not error. *Frazier*, 112/869, 38 S. E. 349.

Not error in giving law of shooting at another. *Baldwin*, 120/188, 47 S. E. 558.

Considered. *Mathews*, 125/50, 54 S. E. 196.

Shooting at another authorized by evidence. *Perkins*, 123/588, 51 S. E. 590.

That if accused shot at the person alleged to have been shot at, a verdict of shooting at another would be authorized, not error; the evidence did not require charge as to self-defense or justification. *Hardison*, 18 A. 692, 90 S. E. 374.

No error in not giving more specific instruction to jury on shooting at another, where not requested. *Gaskins*, 12 A. 97, 76 S. E. 777. Proper charge to jury as to offense of shooting at another. *Jenks*, 12 A. 362, 77 S. E. 184.

No harm in not charging on murder, malice, and voluntary manslaughter, where the accused was convicted of shooting at another. *Espy*, 19 A. 743, 92 S. E. 229.

When error not to charge jury as to shooting at another on trial for assault to murder. *Ripley*, 7 A. 679, 67 S. E. 834. Error in charge of court as to shooting at another, immaterial, where defendant was not convicted of that offense. *Smith*, 7 A. 335, 66 S. E. 964.

Proper instructions; no error in charging that malice or intent to kill need not be shown. *Greenwood*, 9 A. 876, 72 S. E. 432.

Circumstantial evidence not warranting conviction. *Coleman*, 15 A. 338, 83 S. E. 154.

Shooting at another—(Continued).

Conviction of shooting at another warranted. *Jones*, 13 A. 677, 79 S. E. 759; *Hopkins*, 119/569, 46 S. E. 835; *Haynes*, 18 A. 741, 90 S. E. 485; *Richardson*, 18 A. 755, 90 S. E. 487; *Ridley*, 9 A. 202, 70 S. E. 965; *Hornsby*, 9 A. 398, 71 S. E. 490; *Jamison*, 9 A. 448, 71 S. E. 491; *White*, 9 A. 877, 72 S. E. 446; *Reese*, 3 A. 610, 60 S. E. 284.

Defenses to shooting at another. *Mathews*, 125/50, 54 S. E. 196.

Elements of the offense discussed. *Fallon*, 5 A. 659, 63 S. E. 806.

Evidence authorizing conviction. *Wilson*, 13 A. 660, 79 S. E. 767; *Cargill*, 12 A. 574, 77 S. E. 832; *Hunter*, 10 A. 831, 74 S. E. 553.

Conviction demanded by; alleged errors immaterial. *Henderson*, 11 A. 80, 76 S. E. 364.

Here, did not involve shooting at another. *Tyre*, 112/224, 37 S. E. 374.

Husband attacking accused because of past misconduct toward wife, shot at by accused; charge of court considered. *Sams*, 124/26, 52 S. E. 18.

Indictment for assault with intent to murder, shooting at another included in descriptive words of. *Gaines*, 108/772, 33 S. E. 632.

For assault to murder, facts authorizing conviction of shooting at another. *Harris*, 120/167, 47 S. E. 520.

Alleging assault to murder, in case of malicious shooting, whether offense of shooting at another involved, is ordinarily a jury question. *Fallon*, 5 A. 659, 661, 63 S. E. 806.

For assault with intent to murder, conviction of shooting at another under, when not warranted. *Kendrick*, 113/759, 39 S. E. 286. Proper, when. *Rhinehart*, 7 A. 425, 66 S. E. 982; *Glover*, 7 A. 628 67 S. E. 687. When no cause of complaint. *Malone*, 116/272, 42 S. E. 468. On indictment for murder, when upheld. *Watson*, 116/607, 43 S. E. 32, 21 L. R. A. (N. S.) 1.

Shooting at another—(Continued).

Justifiable acts can not be legal provocation for shooting at another. **Mathews**, 125/50, 54 S. E. 196.

Shooting at another; issue of justification; conviction sustained. **Alexander**, 1 A. 289, 57 S. E. 996.

Malice or deliberation not essential to offense of shooting at another. Conviction upheld, regardless of provocation, where shooting was at one running away. **Studstill**, 105/832, 31 S. E. 542. Conviction of shooting at another, sustained, where inferable that shooting was not justifiable but not malicious. **Chester**, 3 A. 332, 59 S. E. 843; **White**, 3 A. 608, 60 S. E. 287.

Necessity, actual or apparent, shooting at another without, not justifiable. **Mitchell**, 110/272, 34 S. E. 576.

Newly discovered evidence of person alleged to have been shot, that he was not shot or shot at, conviction set aside on. **Orr**, 5 A. 76, 62 S. E. 676.

Offense committed by shooting another. **Mosley**, 11 A. 7, 74 S. E. 569.

Presumption that natural consequences of fact were intended. **Beddingfield**, 13 A. 624, 79 S. E. 581.

Statement of accused on the trial demanded conviction; inaccuracies in charge, no cause for reversal. **Carpenier**, 122/171, 50 S. E. 58.

Stealing ducks from yard, shooting to prevent, not justifiable. **Beddingfield**, 13 A. 624, 79 S. E. 581.

Threats, uncommunicated, not admissible here. **Cargill**, 12 A. 574, 77 S. E. 832.

Verdict, form of; proper charge to jury. **Duncan**, 9 A. 873, 72 S. E. 431.

"Guilty of the unlawful shooting of another," not void. **Smith**, 14 A. 286, 80 S. E. 512; **Smith**, 12 A. 667, 78 S. E. 134.

"Guilty of shooting another unlawfully," not void for uncertainty. **Kidd**, 10 A. 148, 75 S. E. 266.

"Shooting at another with intent to kill," not void for uncertainty. **Espy**, 19 A. 743, 92 S. E. 229.

Shooting at another—(Continued).

"Guilty of shooting another not in his own defense," not void for uncertainty. **Mosley**, 11 A. 7, 74 S. E. 569.

Sodomy may be committed otherwise than per anum. **Herring**, 119/710, 46 S. E. 876; **White**, 9 A. 307, 71 S. E. 499.

Can be committed by mouth, and otherwise than per anum. **White**, 136/158, 71 S. E. 135; **Jones**, 17 A. 825, 88 S. E. 712.

Assault with intent to commit, not shown by evidence here. **Bennett**, 21 A. 505, 94 S. E. 626.

How committed by woman with man. **Comer**, 21 A. 306, 94 S. E. 314.

Stabbing, error in not charging jury on offense of, on trial of one charged with assault with intent to murder, with knife. **Lewis**, 14 A. 503, 81 S. E. 378.

Conviction authorized by evidence; and no error in refusing to charge jury on assault with intent to murder. **Gregor**, 17 A. 271, 86 S. E. 459.

Conviction of, on trial for assault with intent to murder, where accused cut after receiving blow. **Heard**, 114/90, 39 S. E. 909.

Conviction of assault and battery, under indictment for stabbing. **Hollis**, 13 A. 307, 79 S. E. 85.

Conviction warranted. **Humphries**, 15 A. 349, 83 S. E. 153.

Defense that person stabbed was trespassing on land of accused; State not allowed to prove that accused was previously convicted of trespass on that land. **Gay**, 115/204, 41 S. E. 685.

Distinction between assault with intent to murder and stabbing. **Napper**, 123/571, 51 S. E. 592.

Error in not charging jury as to statutory offense of, on trial for assault to murder, where intent to kill was not conclusively shown. **Powell**, 7 A. 744, 67 S. E. 1048.

Evidence sufficient to sustain allegation that the cutting was with a knife. **Baker**, 121/601, 49 S. E. 754.

Failure to charge jury on offense of, on trial of one indicted for assault with

intent to murder, not prejudicial error here. *Jones*, 12 A. 134, 135, 76 S. E. 1070. Proper charge of court as to *Shaw*, 12 A. 608, 77 S. E. 913.

In self-defense or other circumstances of justification. Defense of life or limb too restricted. *Edmondson*, 1 A. 116, 57 S. E. 947.

Justified by illegal arrest, conviction set aside. *Dorsey*, 7 A. 366, 66 S. E. 1096. Conviction warranted. *Walker*, 7 A. 546, 67 S. E. 271.

No error in charge to jury that the crime of, is only a misdemeanor. *Harris*, 18 A. 752, 90 S. E. 491. Intent to kill may be presumed from stabbing in back with pocket-knife. *Lott*, 18 A. 748, 90 S. E. 727.

Not justified by blow with fist, unless in case of great inequality between the combatants. *McEvoy*, 123/506, 51 S. E. 500; *Morgan*, 119/566, 46 S. E. 836.

Provocation of the accused, no error in charge of court as to. *Morgan*, 119/567, 46 S. E. 836.

Question of intent and circumstances of justification must be left to jury. *Burris*, 2 A. 418, 58 S. E. 545.

Rather than assault with intent to murder, indicated by the evidence, but conviction of the latter allowed to stand. *Nelson*, 4 A. 226, 60 S. E. 1072.

Subsequent conduct of injured person, when irrelevant. *Morgan*, 124/442, 52 S. E. 748.

Testimony that the prosecutor was "cut" and "stabbed" with a knife, sufficient as to penetration. *Miller*, 125/788, 54 S. E. 692.

When presumed to be accidental. *Newsome*, 19 A. 265, 91 S. E. 441.

When proper to charge jury as to assault and battery, where indictment is for stabbing. *Collier*, 115/19, 23, 41 S. E. 261.

With scissors, a misdemeanor, where no allegation or proof showing act to be felony. *Norwood*, 3 A. 325, 59 S. E. 828.

Street-car, throwing missile into. *Carson*, 20 A. 82, 92 S. E. 549.

V. II—20.

Sunday, keeping place of business open on, when not unlawful. *Penniston*, 117/701, 45 S. E. 65.

Meaning of "business" or ordinary "calling." *Ellis*, 5 A. 615, 63 S. E. 588.

Law not violated by farm-laborer selling soda-water and lemonade on one Sunday, such selling being no part of his business or ordinary calling; it may become such by repetition. *Ellis*, 5 A. 615, 63 S. E. 588.

Law violated, where a person having different occupations works at one on Sunday, though it does not occupy most of his time on other days. *Reed*, 119/562, 46 S. E. 837.

Law, violation of, by sale of coca-cola and sausage at store. *Kent*, 15 A. 210, 82 S. E. 762.

Place of business does not cease to be such while closed on Sunday. *Landreth*, 10 A. 401, 73 S. E. 349.

Pursuing business on; burden on State to show that the acts charged were not works of necessity or charity, though the accused does not admit doing them. *Arnheiter*, 115/573, 41 S. E. 989, 58 L. R. A. 392.

Pursuing business or work of ordinary calling on, not punishable by municipal corporation. *Thrower*, 124/2, 52 S. E. 76, 1 L. R. A. (N. S.) 382, 110 Am. St. R. 147, 4 Ann. Cas. 1.

Sale of liquor on, legislature may authorize city to punish for. *Littlejohn*, 123/427, 51 S. E. 390.

Sale of liquor on, validity of city ordinance as to. *Mayor*, 115/313, 41 S. E. 572.

Sale of liquor on, without license. *Moran*, 102/841, 30 S. E. 298.

Sale on, of meat by butcher, not justified by fact that his customers choose, as a matter of convenience or preference, not to buy on preceding day. *Arnheiter*, 115/572, 41 S. E. 989, 58 L. R. A. 392.

Sale of tobacco, cigars, etc., at drug store on, when unlawful. *Penniston*, 117/701, 45 S. E. 65.

Barber-shop not "kept open" on, by going in, closing door, and polishing

barber's own shoes. **Wright**, 116/799, 43 S. E. 46.

Violation (by barber). **Hunt**, 19 A. 448, 91 S. E. 879. Meaning of "necessity," as used in Sunday law (Penal Code, § 416). *Ib.* By barber shaving members of club. **McCain**, 2 A. 389, 58 S. E. 550.

Judicial notice that work is not one of necessity. **McCain**, 2 A. 389, 58 S. E. 550.

Working on, at ordinary calling, penal, though compensation voluntary and not compulsory. **McCain**, 2 A. 389, 58 S. E. 550.

Work on, for convenience, not "necessary." **Ga. So. R. Co.**, 116/82, 42 S. E. 315.

Work, necessary, in directing movement of cars in railroad yard, under evidence here. **Williamson**, 9 A. 442, 71 S. E. 509.

Work of charity or necessity includes contract of prisoner to pay his attorney for services in representing him and securing bond for his release. **Few**, 10 A. 100, 72 S. E. 720.

Work or business; meaning of "ordinary calling." **Reed**, 119/563, 46 S. E. 837.

"Works of necessity" include work necessary to running of passenger or mail-train; repairing water-tank is such work, when. **Kellam**, 7 A. 575, 67 S. E. 683.

Running excursion-train on, who indictable for; trainmaster acting under orders from superintendent was not. **Craven**, 109/266, 34 S. E. 561.

Running freight-train on. **Brand**, 3 A. 628, 60 S. E. 339; **Griggs**, 3 A. 683, 60 S. E. 364.

Freight-train, conviction of running, by evidence applying to different Sunday from that charged. **Seale**, 121/741, 49 S. E. 740.

Freight-train, conviction of running, set aside, where road began and ended in other States, and ran less than 30 miles in Georgia. **Griggs**, 126/442, 55 S. E. 179.

Freight-train, decision on constitutionality of statute as to (90 Ga.

396), on review, reaffirmed. Whether unconstitutional because of discrimination between railroads, not decided. **Seale**, 126/644, 55 S. E. 472.

Freight-train run on, who liable. **Vaughn**, 116/841, 43 S. E. 249.

Freight-train, "destination" means final stopping-place, not State line. **Seale**, 121/741, 49 S. E. 740.

Train started after 12 o'clock Saturday night, unlawful, though arriving before 8 o'clock Sunday morning. **Seale**, 121/741, 49 S. E. 740.

Violation of superintendent's orders, in running freight-train on. **Seale**, 121/741, 49 S. E. 740. His want of knowledge of the running, immaterial, where he knew of and was responsible for the schedule followed. *Ib.*

When train starting Saturday night and delayed may continue to destination on Sunday. **Westfall**, 4 A. 834, 62 S. E. 558. Evidence showing delay unavoidable, conviction set aside. *Ib.*

Freight-train; superintendent on whose division it is run may be indicted. **Westfall**, 4 A. 834, 62 S. E. 558. Different trains included on one count. *Ib.*

Shooting on, when not unlawful. **Manning**, 6 A. 240, 64 S. E. 710.

Tipling-house, keeping open on Sabbath, evidence warranting conviction of. **Mohrman**, 105/714, 32 S. E. 143, 43 L. R. A. 398, 70 Am. St. R. 74; **Smith**, 105/724, 32 S. E. 127.

Defined; when applies to rooms of social club. **Mohrman**, 105/714, 32 S. E. 143, 43 L. R. A. 398, 70 Am. St. R. 74.

Kept open on Sunday, argumentative and prejudicial charge to jury as to. **Veruki**, 127/289, 56 S. E. 408.

Open on Sabbath, jury properly instructed as to. **Levan**, 114/259, 40 S. E. 252.

Open on Sunday; evidence insufficient against proprietor. Employee's admission was against himself solely. **Kolman**, 2 A. 648, 58 S. E. 1070.

Open on Sunday, indictment and evidence sufficient for conviction. *O'Neil*, 116/839, 43 S. E. 248.

Time of keeping open on Sunday, immaterial; purpose relevant in determining question of necessity and innocence. *Richardson*, 3 A. 313, 59 S. E. 916. Momentary opening sufficient; purpose not considered. *McCarthy*, 121/365, 49 S. E. 287.

Trespass by cutting timber without deed or written contract, construction of statute as to. *Shaw*, 138/48, 74 S. E. 792.

By cutting wood must involve element of wilfulness; i. e. evil purpose. *Black*, 3 A. 297, 59 S. E. 823.

By going on land after forbidden to do so, not committed by one doing so under direction of one whom he believes to be the owner and entitled to possession. *Wiggins*, 119/216, 46 S. E. 86.

By going upon land after forbidden to do so. Tenant placed in possession by owner may forbid; meaning of "cultivated land," in Penal Code, § 217. *Bryce*, 113/705, 39 S. E. 282.

By hunting on posted land; variance between indictment and register of posted lands. *Ballew*, 14 A. 427, 81 S. E. 396.

Charge to jury on. *Cox*, 105/610, 31 S. E. 650.

Conviction set aside because it appeared that defendants acted in good faith (laborers pulling down fence by order of mayor, as encroachment on street). *Cooper*, 5 A. 698, 63 S. E. 719.

Criminal intent presumed from act of, when rebutted. *Campbell*, 127/307, 56 S. E. 417.

Description of land was material allegation; conviction set aside because the evidence was insufficient to support this allegation. *Kennedy*, 19 A. 448, 91 S. E. 878.

Evidence as to title, admitted to show good faith in using force neces-

sary to prevent trespass. *Zoucks*, 19 A. 744, 746, 92 S. E. 228.

Evidence not showing criminal intent, conviction set aside. *Harvey*, 6 A. 242, 64 S. E. 669.

Evidence warranting conviction. *Hunter*, 7 A. 668, 67 S. E. 894; *Cox*, 105/610, 31 S. E. 650; *Jackson*, 4 A. 831, 62 S. E. 538; *Tyler*, 11 A. 762, 76 S. E. 102.

Good faith, as defense. *Hayes*, 13 A. 647, 79 S. E. 761; *Wiggins*, 119/216, 46 S. E. 86.

Indictment charging commission of, on lands of A and B, not supported by proof of its commission on land of A or B. *Eubank*, 105/612, 31 S. E. 741.

Indictment need not allege act was done wilfully. Presumption of criminal intent rebutted by evidence here as to good faith and claim of ownership. *Shrouder*, 121/615, 49 S. E. 702.

In erection of telephone poles. *Holiday*, 12 A. 780, 78 S. E. 482.

Landlord not entitled to forbid tenant's visitors to go on rented premises, when. *Mitchell*, 12 A. 557, 7 S. E. 889.

Meaning of "cultivated land," in law as to. *Horsley*, 16 A. 136, 84 S. E. 600; *Tyler*, 11 A. 764, 76 S. E. 102. To convict under Penal Code, § 217, it must appear that the land was inclosed or cultivated. Evidence as to "field," held insufficient to show cultivation. *Wiggins*, 119/216, 46 S. E. 86.

Notice by owner here not sufficiently explicit to warrant conviction. *Murphey*, 115/201, 41 S. E. 685.

Notice not registered, effect of. *Moody*, 127/821, 56 S. E. 993.

One committing, upon being ordered to leave building, entitled to such time as reasonably necessary for his exit. *Hollis*, 13 A. 308, 79 S. E. 85.

"Squatter" defined; facts not authorizing conviction. *Baker*, 9 A. 423, 71 S. E. 594.

Taking goods from dwelling, with knowledge but without consent of owner, not indictable as. *Grier*, 103/428, 30 S. E. 255.

Title, prosecution not means of determining. *Hayes*, 13 A. 647, 79 S. E. 761. Muniments of title, introduced by accused, to be considered. Any evidence of title in him tends to show good faith of his acts. Dispute of title not in issue. *Hateley*, 118/79, 44 S. E. 852.

Warrant for trespass charged a crime. *Lindsay*, 6 A. 284, 64 S. E. 1005.

Whether facts made case of indictable trespass, or of malicious mischief.

Woods, 10 A. 477, 73 S. E. 608.
See catchword, Intent.

Usury, act of 1908 as to, not applicable to absolute sale (of account for wages and promissory note). *Jackson*, 5 A. 177, 62 S. E. 726.

Misdemeanor by charging over five per cent per month on loan secured by assignment of wages. *Patterson*, 146/364, 91 S. E. 116.

Uttering forged paper; error in omitting to charge jury as to essential elements of the crime; knowledge that the paper was fraudulent, and intent to defraud some one. *Raper* 16 A. 121, 84 S. E. 560.

Evidence sufficient to convict; proper instructions to jury. *Bates*, 18 A. 718, 90 S. E. 481.

Verdict, guilty of uttering, etc., "knowing the same to be untrue," was a nullity, and amounted to an acquittal, because it failed to find that the accused had an intent to defraud. *Lambert*, 17 A. 348, 86 S. E. 782.

Vagrancy; act of 1903 amends but does not repeal P. C. 1895, § 453. *Welborn*, 119/429, 46 S. E. 645.

Act of 1903 not applied to charge dated before its passage. *Cody*, 119/418, 46 S. E. 647.

Age of accused did not appear, it being alleged as between sixteen and twenty years; and so as to inability of parents to support her; conviction warranted. *Stevens*, 118/806, 45 S. E. 615.

Bond, refusal to give, is not part of the offense. *Morton*, 118/786, 45 S. E.

616. Presumption that before the accused was sentenced he was allowed to give bond for future good conduct. Giving bond after verdict is matter for the court, and requires no action by jury. *Coleman*, 119/307, 46 S. E. 451.

Charge that "the gist of the offense is failure to work, when work is necessary," refusal of, no error, on trial of one charged with being professional gambler. *Simmons*, 126/632, 55 S. E. 479.

City ordinance as to keeping a "dive" was not covered by State law as to vagrancy. *Smith*, 22 A. 45, 95 S. E. 470. No effort to punish for vagrancy, by municipal ordinance making penal idling, loitering, or loafing on streets. *Taylor*, 118/63, 44 S. E. 845.

Earning small sums at different times, no answer to general state of idleness. *Welborn*, 119/429, 46 S. E. 645. Occasional work, and earning of small sums, no answer to general idleness. *Cody*, 118/784, 45 S. E. 622. Law not intended to compel one to earn more than his necessities require. *Leonard*, 5 A. 494, 63 S. E. 530.

Evidence warranting conviction. *Glover*, 126/567, 55 S. E. 403; *Carter*, 126/570, 55 S. E. 477; *Darby*, 127/46, 56 S. E. 91; *Stevens*, 118/806, 45 S. E. 615. *Cody*, 118/784, 45 S. E. 622; *Welborn*, 119/429, 46 S. E. 645. Evidence in conflict; conviction sustained. *McLeod*, 118/82, 44 S. E. 816; *Walker*, 118/772, 45 S. E. 621. Evidence insufficient for conviction. *Daniel*, 110/915, 36 S. E. 293; *Hood*, 4 A. 847, 62 S. E. 570; *Lewis*, 3 A. 322, 59 S. E. 933; *Hawks*, 3 A. 447, 60 S. E. 207; *Hartman*, 119/427, 46 S. E. 628; *Griffin*, 15 A. 552, 83 S. E. 871; *Smith*, 15 A. 714, 84 S. E. 159; *Teasley*, 109/282, 34 S. E. 577; *Leonard*, 5 A. 494, 63 S. E. 530. *Johnson*, 23 A. 10, 97 S. E. 263; *Randall*, 23 A. 339, 99 S. E. 60.

Conviction unauthorized, without evidence that the accused was able to work, and that he did not have sufficient

means for his support. *Elders*, 17 A. 742, 88 S. E. 414.

Judgment not arrested. *Hollis*, 118/760, 45 S. E. 617.

Married woman, conviction of, set aside, where it was not shown that her husband was unable to support her, though she lived apart from him. *Brown*, 14 A. 25, 79 S. E. 1133.

Minor, conviction of, unwarranted, where there was no evidence that her parents were unable to support her. *Braswell*, 119/72, 45 S. E. 963; *Collins*, 125/15, 53 S. E. 809.

Doubtful whether minors are subject to prosecution. *Teasley*, 109/282, 34 S. E. 577. Vagrancy law not applied to minor, especially one who is, being supported by parent able and willing. *Henderson*, 112/19, 37 S. E. 98. No legal conviction of minor, without proof of inability of parents to support him, and that he was not attending school. *Rogers*, 4 A. 392, 61 S. E. 496. No legal conviction of minor over sixteen years, whose father is able to support her. *Turner*, 2 A. 386, 58 S. E. 492. Child of less than sixteen years not subject to conviction of vagrancy, under act of 1905. *Johnson*, 124/421, 52 S. E. 737.

Negative testimony of vagrancy, overcome by positive testimony of innocence of the charge. *Jacobs*, 1 A. 519, 57 S. E. 1063. Conviction set aside, where based on testimony that at times the accused was seen not to work; there being unimpeached testimony that he worked. *Miller*, 4 A. 392, 61 S. E. 494.

Not shown by fact that one is black, ragged, without money, and has not worked for four days. *Gainer*, 2 A. 126, 58 S. E. 295.

Sentence without affording opportunity to give bond for future good conduct, not entitle accused to discharge on habeas corpus; he should be held in custody to await proper sentence. *Coleman*, 119/307, 46 S. E. 451.

Verdict of vagrancy construed. *Morton*, 118/786, 45 S. E. 616.

Wager, facts constituting. *De Florin*, 121/594, 49 S. E. 699, 104 Am. St. R. 177.

Weapon, carrying to place of public worship; law not violated by one having at such place a weapon he did not carry to it. Place included a spring near the church here. *Culberson*, 119/805, 807, 49 S. E. 175; *Modesette*, 115/582, 41 S. E. 992.

Carrying to public gathering; law violated where one carried into the assemblage a weapon from a house near by, at which he had deposited it in order to have it at hand when the gathering should occur. *Wyane*, 123/566, 51 S. E. 636. Assemblage of 400 at barbecue on public holiday is a public gathering. *Ib.*

Carrying to public gathering; meaning of "public gathering," *Culberson*, 119/805, 808, 47 S. E. 175.

Character of, as affecting question as to intent; cases distinguished, in discussing homicide with hoe. *Cox*, 21 A. 241, 94 S. E. 47.

Character of, as deadly, not conclusively shown. A piece of wood was suddenly seized, and a blow from it caused death. *Taylor*, 108 384, 34 S. E. 2.

Character of, sufficiently shown by wound and other facts. *Baker*, 121/601, 49 S. E. 754.

Deadly, ax or pine-tree hack is, when used to strike person on head. *Cullins*, 147/17, 95 S. E. 675. *Reed*, 148/18, 95 S. E. 692.

Deadly, brass knucks not shown as; not so held as matter of law. *Tanner*, 145/72, 88 S. E. 554.

Deadly, brick or rock thrown not to be assumed as, in charging jury. *Hunter*, 147/823, 95 S. E. 668.

Deadly character of, evidence insufficient. *Mathews*, 104/497, 30 S. E. 727; *Meriwether*, 104/500, 30 S. E. 806.

Deadly, defined in charge of court. *Clark*, 7 A. 609, 67 S. E. 697.

Deadly; issue as to rock in hands of accused. *Boone*, 145/37, 88 S. E. 558.

Deadly; knife not necessarily such. *Burris*, 2 A. 419, 58 S. E. 545.

Deadly, rock as; evidence unsatisfactory. *Jordan*, 124/780, 53 S. E. 331.

Intent to kill may be presumed from stabbing in back with pocket-knife. *Lott*, 18 A. 748, 90 S. E. 727. Homicide by striking with stick. *Green*, 18 A. 678, 90 S. E. 284.

Intent to kill not presumed from use of, where death did not ensue. *Moore*, 11 A. 259, 74 S. E. 1102.

Judge's remark in presence of jury that "a rifle is a shotgun," not cause new trial. *Burney*, 22 A. 622, 97 S. E. 85.

Likely to produce death charged, must be proved. How shown. *Paschal*, 125/279, 54 S. E. 127; *Prater*, 16 A. 296, 85 S. E. 204.

Manner in which used may show intent to kill. *Nelson*, 4 A. 223, 60 S. E. 1072. Deadly character of, inferred from nature and effect of wound. *Id.*; *Merritt*, 19 A. 616, 91 S. E. 885. Not deadly, error in charge as to effect of using. *Cress*, 126/564, 55 S. E. 491.

Pistol presumed deadly. *Tyre*, 11 A. 226, 37 S. E. 374.

Placing hand on pocket as if about to draw, may be construed as menace. *Spence*, 7 A. 833, 68 S. E. 443. See *Rossi*, 7 A. 734, 68 S. E. 56.

Presumption as to intent to kill, from weapon used. *Conley*, 21 A. 135, 94 S. E. 261; *McLeod*, 128/17, 57 S. E. 83; *Flannigan*, 135/221, 59, 69 S. E. 171; *Delk*, 135/313, 69 S. E. 541, 22 Ann. Cas. 105; *Harrison* 20 A. 159, 92 S. E. 970. Intimation in charge of court as to manner of use of weapon, ground for new trial. *Id.* 159.

Proof sufficient of assault with rock as. *Little*, 3 A. 442, 60 S. E. 113. Habit of carrying, when relevant as evidence. *Watts*, 3 A. 606, 60 S. E. 287.

Prohibition and regulation of carrying weapons. *Strickland*, 137/1, 12, 72 S. E. 260, 36 L. R. A. (N. S.) 115, Ann. Cas. 1913B, 323.

Thick beer-bottle not held deadly, as matter of law. *Farmer*, 112/80, 37 S. E. 120.

To convict of assault with intent to murder, it must appear that the weapon used was one likely to produce death; court should so instruct jury; but new trial not required, because of failure to do so here. *Merritt*, 19 A. 91 S. E. 885.

Whether stick exhibited to jury was deadly, was for them to determine, not for non-experts. *McDuffie*, 121/581, 49 S. E. 708; *Moran*, 120/846, 48 S. E. 324.

See catchwords "Concealed," "Pistol."

Wife-beating, charge as to, on trial of husband for slaying her, held not error. *Luby*, 102/638, 29 S. E. 494.

Conviction warranted. *Slade*, 10 A. 802, 74 S. E. 92; *Bradford*, 17 A. 315, 86 S. E. 734.

Evidence warranting conviction; admissibility of evidence as to statements of wife. *Joiner*, 119/315, 46 S. E. 412.

Husband may forcibly repel assault by wife, but is never justified in striking her by way of chastisement or in resentment of past injury. *Lawson*, 115/578, 41 S. E. 993.

Proof not confined to a single transaction, under indictment here. *Tolbert*, 16 A. 311, 85 S. E. 267.

Women dependent solely on immoral practices for support are, in law, "without means of support." *Smith*, 22 A. 45, 95 S. E. 470.

Words. Meaning of "tending to cause a breach of the peace;" word may have this tendency though the person to whom addressed may not be able to resent them at the time of their use. *Elmore*, 15 A. 461, 83 S. E. 799.

"Liar," when calculated to provoke breach of peace. *Bedford*, 5 A. 462, 63 S. E. 515; *Rumsey*, 5 A. 803, 63 S. E. 921.

Whether profane or vulgar, a question for the court. *Lamb*, 121/345, 49 S. E. 275.

"Wound," meaning of. *Gatlin*, 18 A. 9, 89 S. E. 345.

Nature of, as evidence of intent to kill. *Nelson*, 4 A. 223, 60 S. E. 1072.

8. PUNISHMENT—SENTENCE.

Alternative sentence, not void because one of the penalties is unauthorized. One who voluntarily complies with the part which is legal can not have the judgment of conviction reviewed. *Brown*, 123/497, 51 S. E. 507.

When illegal. *Wallace*, 126/750, 55 S. E. 1042.

Fine, or, in default thereof, imprisonment. *Hardy*, 128/27, 57 S. E. 99.

Sentence by municipal court, to pay fine, and in default of payment to work on streets, is not an alternative sentence. Express legislation necessary to authorize enforcement of fine in this way. *Williams*, 121/665, 49 S. E. 732. When such sentence legal. *Leonard*, 126/63, 54 S. E. 963. To labor on streets, with alternative of discharge on payment of fine, legal. *Shuler*, 126/73, 54 S. E. 965.

Amendment or change of sentence, when allowed, and when not. *Rutland*, 14 A. 746, 82 S. E. 293.

Of sentence, directed by Supreme Court. *Screen*, 107/718, 33 S. E. 393.

Of sentence imposing fine, by adding alternative of a term on the public works. *Lewis*, 117/798, 45 S. E. 68.

Not allowable, when. *Mathews*, 16 A. 208, 84 S. E. 980.

Not error. *Harris*, 18 A. 502, 89 S. E. 589.

To cure alleged uncertainty of sentence, allowed. *Clark*, 10 A. 467, 73 S. E. 687.

Of record so as to conform to oral sentence. *Tyler*, 125/45, 53 S. E. 818.

Arrest and enforcement of sentence, lawful, where sentence not enforced for several months. *Short*, 138/834, 76 S. E. 359.

Assignment of error as to punishment, insufficient. *Sable*, 22 A. 768, 97 S. E. 271.

Attempt to commit crime, punishment for. *Alsobrook*, 126/100, 54 S. E. 805.

To commit misdemeanor, punishment of, like the misdemeanor itself. *Brownlow*, 112/405, 37 S. E. 733.

Accused not harmed by charge of court not referring to punishment for, when. *Geter*, 22 A. 264, 95 S. E. 877.

Bill of exceptions need not show sentence. *Turner*, 18 A. 653, 90 S. E. 225.

Sentence need not be referred to in. *Starling*, 5 A. 172, 62 S. E. 993.

Sentence complied with, exceptions not considered. *Johnson*, 13 A. 618, 79 S. E. 588.

Sentence complied with, ground for dismissing writ of error; procuring dismissal on this ground estops from enforcing sentence. *Canady*, 5 A. 364, 63 S. E. 142.

Bond held to be for appearance only, and not to require prisoner to abide sentence. *City of Atlanta*, 8 A. 213, 68 S. E. 847.

Capital felony, where punishment less than death. *Cæsar*, 127/710, 57 S. E. 66.

Certiorari and writ of error, sentence affirmed on, binds, though affirmance resulted from dismissal. *Brady*, 101/190, 28 S. E. 679.

Punishment changed on, from that imposed by police court. *Johnson*, 6 A. 779, 65 S. E. 810.

Changing or vacating sentence. *Griffin*, 12 A. 618, 77 S. E. 1080.

Change of sentence announced before signing judgment and after hearing evidence of bad character of accused, no ground for reversal. Action in so hearing evidence, not reviewable. *Stoker*, 23 A. 12, 97 S. E. 273.

Order to change or modify sentence, after term of court ended, void for want of jurisdiction. *Porter*, 148/261, 96 S. E. 426; *Shaw*, 148/589, 97 S. E. 520.

Charge as to punishment. *Battle*, 105/704, 32 S. E. 160; *Taylor*, 105/781, 31 S. E. 764.

That jury had "no pardoning power" on account of the confinement which the defendant had suffered, not error. *Goss*, 14 A. 402, 81 S. E. 247.

As to effect of verdict recommending that a misdemeanor punishment be imposed, considered. *Winder*, 18 A. 67, 88 S. E. 1003.

Accused not harmed by judge's omission of, as to reduction of punishment, which was reduced by the verdict. *Geter*, 22 A. 256, 266, 95 S. E. 877.

As to discretion of court in regard to punishment, error but not cause for new trial. *Cunningham*, 103/239, 29 S. E. 926.

As to discretion of court in regard to punishment, when error. *Echols*, 109/508, 34 S. E. 1038.

Correct charge to jury as to punishment for seduction. *Wooten*, 23 A. 768, 99 S. E. 316.

Omission to charge jury as to penalty for assault with intent to murder, no error, in absence of request. *Cason*, 23 A. 540, 99 S. E. 61.

Collateral attack on sentence, when not allowed. *Mayor etc. of Brunswick*, 14 A. 316, 80 S. E. 730.

Consent verdict, with recommendation as to punishment, effect of. *Spear*, 17 A. 540, 87 S. E. 826.

Constitutional limitation of. *Pearson*, 124/701, 52 S. E. 751.

Contempt, defendant need not be present at rendition of judgment imposing punishment for; such a proceeding is merely quasi-criminal. *Drane*, 18 A. 282, 89 S. E. 304.

Fine, with alternative of 10 days imprisonment, for alleged contempt of court, abuse of discretion. *In re Hartfield*, 13 A. 451, 79 S. E. 225.

Convict, power to compel to work or maintain discipline. *Westbrook*, 133/578, 66 S. E. 788, 18 Ann. Cas. 295; *Loeb*, 133/796, S. E. 101, 18 Ann. Cas. 376.

Conviction does not necessarily include sentence. *Cantrell*, 141/98, 104, 80 S. E. 649.

Costs, sentence can not lawfully include judgment for, without statutory authority. *Leonard*, 126/63, 54 S. E. 963.

Counts, verdict of guilty on a number of, authorizes sentence not exceeding that which may legally be imposed on any single count, if any count is good. *Brannon*, 21 A. 328, 94 S. E. 259.

Sentence where general verdict is rendered on indictment containing different counts. *Morse*, 10 A. 66, 72 S. E. 534.

County of the crime, sentence imposed outside of, void, though with consent of defendant. *Barrs*, 22 A. 642, 97 S. E. 86.

Cruel and unusual punishments; question not properly raised. *Hardison*, 23 A. 505, 98 S. E. 392.

Cumulative sentences, practice as to. *Tooke*, 4 A. 504, 61 S. E. 917.

Unauthorized by city ordinance here; direction by reviewing court as to reforming sentence. *Cassidy*, 8 A. 166, 68 S. E. 862.

For different misdemeanors charged in one indictment. *Bishop*, 21 A. 236, 94 S. E. 49.

Direction to remold sentence. *Kent*, 18 A. 32, 88 S. E. 913; *Elsie*, 21 A. 501, 94 S. E. 627.

Discretion of court as to punishment, not controlled, where statutory limit not exceeded. *Coppage*, 4 A. 696, 62 S. E. 113.

In disregarding jury's recommendation that one charged with felony be punished for misdemeanor, not reviewable. *Dunham*, 8 A. 668, 70 S. E. 111. See *Bragg*, 15 A. 368, 83 S. E. 274.

Of jury as to recommendation in capital case; failure to make, not ground for new trial. *Brown*, 105/640, 31 S. E. 557.

Enforcement of sentence, on bench warrant or order of court. *Porter*, 148/261, 96 S. E. 426.

Estoppel of State to enforce sentence, after procuring dismissal of writ of error, by statement that the sentence was satisfied. *Canady*, 5 A. 365, 63 S. E. 142.

Evidence to affect jury's action as to punishment, rejected. *Perry*, 110/234, 36 S. E. 781.

Hearing of, to determine as to character of punishment of person convicted, can not be matter for review. *Elsie*, 21 A. 501, 94 S. E. 627.

Excessive punishment, no ground for new trial. *Rumsey*, 2 A. 620, 58 S. E. 1066; *Cole*, 2 A. 738, 59 S. E. 24; *Tipton*, 119/304, 46 S. E. 436; *McCollum*, 119/308, 46 S. E. 413, 100 Am. St. R. 171; *Whittington*, 121/196, 48 S. E. 948; *Bradley*, 121/201, 48 S. E. 981; *Hill*, 122/166, 50 S. E. 57. *Mixon*, 123/581,

51 S. E. 580, 107 Am. St. R. 149; **Truitt**, 124/657, 52 S. E. 890; **Howell**, 124/698, 52 S. E. 648, 649; **Mayson**, 124/789, 53 S. E. 321; **Guthrie**, 125/291, 54 S. E. 180; **Fears**, 125/739, 740; 54 S. E. 661, 667. S. A. L. Ry., 23 A. 74, 97 S. E. 549; **McCall**, 23 A. 770, 99 S. E. 471. For direct exception, not ground for new trial. **Bellinger**, 116/545, 42 S. E. 747; **Burgamy**, 114/852, 40 S. E. 991.

Punishment in misdemeanor case was not. **Harris**, 18 A. 502, 89 S. E. 589.

Punishment not excessive, for violation of city ordinance, where within limit prescribed. **Backus**, 7 A. 397, 66 S. E. 1030.

On certiorari to review judgment overruling motion for new trial, ground as to excessiveness of sentence imposed not considered. **Sable**, 22 A. 768, 97 S. E. 271.

Sentence for violation of local option law, not excessive. **Woodard**, 103/496, 30 S. E. 522.

Sentence not excessive, and not reviewable, unless it exceed the statutory limit. **Reese**, 3 A. 610, 60 S. E. 284; **Taylor**, 8 A. 242, 68 S. E. 945; **Brown**, 8 A. 691, 70 S. E. 40. **McCullough**, 11 A. 612, 76 S. E. 393; **Rogers**, 11 A. 814, 76 S. E. 366; **Beddingfield**, 13 A. 623, 79 S. E. 581; **Myrick**, 13 A. 625, 79 S. E. 580; **Harper**, 14 A. 603, 81 S. E. 817; **Hays**, 14 A. 604, 81 S. E. 914; **Prater**, 16 A. 297, 85 S. E. 261; **Griggs**, 17 A. 301, 86 S. E. 726; **Wilkinson**, 18 330 89 S. E. 460; **Weldon**, 21 A. 332, 94 S. E. 326; **Sable**, 22 A. 768, 97 S. E. 271; **Wallace**, 110/284, 34 S. E. 852; **Fitts**, 121/567, 49 S. E. 793, 67 L. R. A. 803, 104 Am. St. R. 167; **Godwin**, 123/569, 51 S. E. 598; **Loeb**, 133/796, 67 S. E. 101, 18 Ann. Cas. 376.

Felonies reduced; stabbing, larceny from the person, and larceny from the house. **Clark**, 136/813, 72 S. E. 254.

Reduced to misdemeanors by act of 1866. **Tanner**, 108/245, 33 S. E. 884.

Offense remains though punishment reduced. **Williams**, 127/23, 55 S. E. 917.

Punishable as misdemeanor, on recommendation and approval. Violation of liquor law. **Martin**, 148/406, 96 S. E. 882.

Sentence for misdemeanor on conviction of felony. **Wells**, 116/88, 42 S. E. 390.

Fine, defendant entitled to reasonable time to pay, under alternative sentence; tender to sheriff, sufficient, though prisoner was in chain-gang. **Abram**, 10 A. 137, 72 S. E. 932.

Effect of pardon after payment of. **McDonald**, 129/245, 58 S. E. 860, 12 Ann. Cas. 701.

Non-payment of, as ground for re-arrest. **Walden**, 16 A. 408, 85 S. E. 452.

Not excessive. **Woodard**, 103/496, 30 S. E. 522.

Not recoverable on mere appearance bond. **City of Atlanta**, 8 A. 213, 68 S. E. 847.

Paid by one convicted under void indictment, not recoverable by rule against sheriff. **McDonald**, 129/242, 58 S. E. 860, 12 Ann. Cas. 701. Judgment of conviction erroneous, not void, where court had jurisdiction. Fine money not recovered. **Holloman**, 3 A. 59 S. E. 828.

Paid, convict not interested in. **Thigpen**, 138/606, 75 S. E. 643.

Sheriff discharging prisoner on promise of another to pay, became liable for the amount; defendant not subject to rearrest on failure to pay. **Howard**, 12 A. 353, 77 S. E. 191.

Paid, not under duress; ground for dismissing writ of error. **Kitchens**, 4 A. 440, 61 S. E. 736.

Paid to avoid alternative sentence of imprisonment; ground for dismissing writ of error. *In re Hartsfield*, 13 A. 451, 79 S. E. 225.

Sentence, change of, by omitting alternative of fine, before signing the judgment. **Stoker**, 23 A. 12, 97 S. E. 273.

Sentence in different cases construed and distinguished, regarding fine and imprisonment. **Daniel**, 137/827, 74 S. E. 260.

Within statutory limit is in discretion of judge, and not reviewable. *Tipton*, 119/304, 46 S. E. 436; *McCollum*, 119/308, 46 S. E. 413, 100 Am. St. R. 171.

Fornication, sentence for, not to be executed where convict marries the woman. *Cox*, 133/682, 66 S. E. 799.

Fraud by procuring value to serve and refusing service, punishment of. *Wilson*, 138/489, 75 S. E. 619.

General and local laws, coexisting, punishment different under. *Blake*, 118/333, 45 S. E. 249.

Hard labor is not necessarily required where law prescribes work in chain-gang; and sentence can not require. *Screen*, 107/715, 33 S. E. 393.

In chain-gang in misdemeanor case, sentence to, not proper; court directed to remold sentence. *Kent*, 18 A. 32, 88 S. E. 913.

Heavier sentence than others received at same term, no ground for new trial. *Seats*, 122/173, 50 S. E. 65.

Homicide. Discretion of jury to recommend life imprisonment, not limited or circumscribed. *Lucas*, 146/315, 324, 91 S. E. 72.

Illegal sentence, no ground for motion for new trial. *Eltzie*, 21 A. 501, 94 S. E. 627; *McLeod*, 22 A. 241, 95 S. E. 934; *Martin*, 15 A. 496, 83 S. E. 872.

Matter for direct exception; not ground for new trial. *Burgamy*, 114/852, 40 S. E. 991.

No ground for absolute discharge, when legal can be imposed. *Pearson*, 124/714, 52 S. E. 751, 4 Ann. Cas. 501.

Because in part dependent on future conduct. *Wallace*, 126/750, 55 S. E. 1042. See *Gordon*, 126/750, 55 S. E. 489.

Sentence not rendered illegal by misconduct of persons in charge of convicts. *Loeb*, 133/796, 67 S. E. 101, 18 Ann. Cas. 376.

Imprisonment before reception of remitter, when legal. *Wiggins*, 112/745, 38 S. E. 86.

In jail of county other than that in which crime committed; liability for expenses of prisoner. *Talbot County*, 115/766, 42 S. E. 72.

Lawful as to convict sentenced to public work. *Brady*, 101/190, 28 S. E. 679.

Of city offender in county jail, not unlawful. *Brady*, 101/190, 28 S. E. 670.

Of one convicted under void indictment; remedies; liability of officer holding him in custody. *McDonald*, 129/243, 58 S. E. 860, 12 Ann. Cas. 701.

Presumption as to legality of. *Williford*, 121/179, 48 S. E. 962.

Unlawful, in chain-gang controlled and managed by private persons who pay the guards appointed by the county authorities. *Daniel*, 114/533, 40 S. E. 805.

Without opportunity to pay fine, when illegal. *Calhoun*, 106/336, 32 S. E. 86, 43 L. R. A. 30, 71 Am. St. R. 254.

In jail twelve months, and during said imprisonment to work at hard labor on chain-gang, is illegal sentence. *Screen*, 107/718, 33 S. E. 393.

Indictment, sentence limited by allegations of. *Newman*, 101/534, 28 S. E. 1005. Only one punishment to be imposed under indictment charging violation of statute in several ways. *Hall*, 8 A. 748, 70 S. E. 211.

Insanity, sentence not performed because of, enforced after discharge of accused from sanitarium. *Talley*, 141/110, 80 S. E. 556.

Judge, remarks by, when imposing sentence, not reviewable. *Cason*, 16 A. 821, 86 S. E. 644.

Oral statements of, in passing sentence are no part of the judgment, whether made before or after signing it. *Mathews*, 16 A. 208, 84 S. E. 980.

Testimony of, as to what he meant by sentence, irrelevant, when. *Abraham*, 10 A. 139, 141, 72 S. E. 932.

Condemnatory language of, when imposing sentence, does not disqualify from passing on motion for new trial. *Harrison*, 20 A. 157, 92 S. E. 970.

Larceny punishable by deprivation of right to vote, etc., even where statute does not provide for imprisonment or fine. *Jenkins*, 14 A. 279, 80 S. E. 688.

Section 175 of Penal Code creates a crime, but does not prescribe punishment. *Jenkins*, 14 A. 276, 80 S. E. 688.

One indicted under § 175 of Penal Code cannot object to imposition of sentence, on ground that section provides no punishment. Proper mode of raising objection. *Jenkins*, 13 A. 695, 79 S. E. 861. Larceny from house, defined in section 175 of Penal Code is punishable under sections 177, 178, 179. *Jones*, 19 A. 67, 90 S. E. 981.

Local prohibitory law, penalty not prescribed in supplied by Penal Code. *Barker*, 118/35, 44 S. E. 874.

Long delay between verdict and sentence, defendant not entitled to complain of, where caused by his taking the case to Supreme Court. *Darsey*, 17 A. 280, 86 S. E. 781.

Malpractice, sentence imposing penalty of removal from office on conviction of, not in conflict with provisions of constitution as to impeachment. *Kent*, 18 A. 32, 88 S. E. 913.

Marriage of the guilty parties after fornication will prevent execution of sentence. *Cox*, 133/682, 66 S. E. 799.

Meaning of "pronounce" sentence. *Sanders*, 18 A. 787, 90 S. E. 728.

Minor, sentence of, to reformatory for rest of minority unless sooner discharged or paroled, lawful. Validity of law. *Taylor*, 139/579, 77 S. E. 373.

Plea of guilty by, as basis for sentence. *Taylor*, 139/579, 77 S. E. 373.

Misdemeanor, simply, finding of, when no basis for judgment. *Wells*, 116/87, 42 S. E. 390; *Smith*, 117/16, 43 S. E. 440.

Form of sentence in cases of, what improper. *Screen*, 107/715, 33 S. E. 393.

Code provision for punishment of fraudulent conversion as, where amount converted does not exceed \$50, not applicable where the money is delivered in installments as parts of a larger sum under a single agreement, and more than \$50 is converted. *McCoy*, 19 A. 32, 90 S. E. 737.

Punishment for, last expression of General Assembly, as shown by tax act governs. *Burgamy*, 114/852, 40 S. E. 991.

Punishment for, constitutionality of code section as to. *McFarland*, 115/567, 41 S. E. 1000.

Punishment definitely prescribed by statute as to misdemeanors, of prospective force. *Anderson*, 2 A. 1, 58 S. E. 401.

Motion to set aside sentence, for reason de hors record, not treated like motion in arrest of judgment. *Earnest*, 148/632, 97 S. E. 672.

Municipal police court, sentence of, authorized by ordinance under charter. *Chester*, 135/423, 69 S. E. 549.

Sentence of police court not void for uncertainty because not dated and place of punishment (hard labor) not stated. *Clark*, 10 A. 467, 73 S. E. 687.

Sentence in municipal court, not too indefinite for enforcement ("90 days on the street, or \$150"); *Maddox*, 18 A. 614, 89 S. E. 1090.

"Confinement on streets," means to labor on streets. *Shuler*, 126/73, 54 S. E. 965.

Sentence to work in chain-gang, not authorized by act empowering city to punish by fine and imprisonment. *Littlejohn*, 123/427, 51 S. E. 390.

Sentence of, unlawful in the first instance, binding if affirmed on certiorari or writ of error. *Brady*, 101/190, 28 S. E. 670.

Want of power in police court to impose punishment for assault and battery, when not questioned by habeas corpus. *Hicks*, 144/403, 87 S. E. 415.

Ordinance, punishment for violating, by requirement to labor, without alternative of fine. *Jones*, 141/646, 81 S. E. 885.

Ordinances as to punishment, construed. *Lyons*, 125/231, 54 S. E. 183.

Punishment inflicted by fine and labor under ordinance, not unconstitutional. *Loeb*, 7 A. 524, 67 S. E. 536.

Ordinance in conflict with charter as to punishment. *Reddick*, 14 A. 461, 81 S. E. 384. Power of municipal

court to require labor on public works, without alternative of fine. *Jones*, 14 A. 540, 81 S. E. 586.

Punishment by city, not for failing to pay license, but for doing business without first obtaining license. *Johnson*, 114/426, 40 S. E. 322.

Power of municipal corporation as to punishment under "blind-tiger ordinance." *Cassidy*, 8 A. 166, 68 S. E. 862.

Punishment by both fine and imprisonment, by city ordinance, when illegal. *Papworth*, 106/378, 32 S. E. 363.

Murder, punishment for, power of jury as to. *Cohen*, 116/573, 42 S. E. 781; *Thomas*, 129/420, 424, 59 S. E. 248.

Death the rule, life imprisonment the exception. *Perry*, 102/380, 30 S. E. 903.

Discretion of jury as to; and duty of judge. *Burley*, 130/348, 60 S. E. 1006.

New trial, sentence imposed not subject of ground for. *Daniel*, 118/16, 43 S. E. 861; *Chapman*, 118/58, 44 S. E. 814; *McLeod*, 22 A. 241, 95 S. E. 934; *Sable*, 22 A. 770, 97 S. E. 271; *Beaudrot*, 126/579, 55 S. E. 592.

Oral announcement of sentence, whether judgment. *Rutland*, 14 A. 750, 82 S. E. 293; *Griffin*, 12 A. 618, 77 S. E. 1080. Sentence orally announced was "pronounced," within meaning of statute as to time for withdrawal of plea of guilty. *Griffin*, 12 A. 618, 77 S. E. 1080.

Order to enforce sentence without rule to show cause, when legal. *Neal*, 104/509, 30 S. E. 858, 42 L. R. A. 190, 69 Am. St. R. 175.

Directing enforcement of sentence; objections too late, when. *Raste*, 14 A. 26, 80 S. E. 35.

Plea of guilty could not be withdrawn as a matter of right after sentence had been orally pronounced. *Sanders*, 18 A. 786, 90 S. E. 728.

Withdrawal of plea of guilty after sentence, discretion as to allowing; error in not allowing in view of facts. *Griffith*, 12 A. 615, 77 S. E. 1080.

Power of fine or imprisonment; and power to coerce payment of former by latter. *Plunkett*, 136/72, 84, 70 S. E. 781, 35 L. R. A. (N. S.) 583, Ann. Cas. 1912B, 1259.

Conferred as to sentence, when no violation of constitution. *Loeb*, 133/76, 67 S. E. 101, 18 Ann. Cas. 376.

Of municipal court to require labor on public works without alternative of fine. *Andrews*, 15 A. 389, 83 S. E. 436; *Freeman*, 15 A. 421, 83 S. E. 436. Oral sentence, not judgment. *Easterling*, 11 A. 134, 74 S. E. 899.

Prevention of execution of sentence. *Cox*, 133/682, 66 S. E. 799.

Principals in first and second degrees, and accessories, punishment of, alike. *Bishop*, 118/799, 45 S. E. 614; *McWhorter*, 118/55, 44 S. E. 873.

Probation, service on, out of confinement; revocation on violation of parole. *Chamblin*, 148/592, 97 S. E. 520.

Provision for, in sentence. *Rutland*, 14 A. 747, 82 S. E. 293.

Discretion of court as to revocation of privilege to delinquent probationer. *Olsen*, 21 A. 795, 95 S. E. 269.

Prohibition embraces making an act penal. *James*, 124/74, 52 S. E. 295.

Proof of sentence, how made. *Anglin*, 14 A. 566, 81 S. E. 804.

Recommendation of jury as to sentence. *Grant*, 124/758, 53 S. E. 334; *Coleman*, 3 A. 299, 59 S. E. 829; *Duncan*, 141/4, 80 S. E. 317; *Hart*/672, 81 S. E. 1108.

Effect of; instruction not error. *Lingerfelt*, 12/4, 53 S. E. 803, 5 Ann. Cas. 310.

Effect of. *Lingerfelt*, 125/3, 53 S. E. 803, 5 Ann. Cas. 310. When court may disregard. *Guthrie*, 125/291, 54 S. E. 180.

As to misdemeanor punishment, in felony case, judge may disregard. *Coppage*, 4 A. 696, 62 S. E. 113; *Williams*, 17 A. 820, 88 S. E. 714.

Disregarded by judge, no ground of complaint. *Coney*, 101/582, 28 S. E. 918.

That one convicted of felony be punished as for a misdemeanor, is addressed to discretion of court. Refusal to

follow, no ground for new trial. *Daniel*, 118/16, 43 S. E. 861; *Mack*, 118/755, 45 S. E. 603.

Charges that did not abridge right of. *Perry*, 102/366, 30 S. E. 903; *Cyrus*, 102/616, 29 S. E. 917.

Proper charge as to effect of; opinion not intimated as to guilt. *Griffin*, 18 A. 402, 89 S. E. 625; *Williams*, 119/426, 46 S. E. 626.

No error in charge as to. *Odom*, 13 A. 687, 79 S. E. 858.

Jury may make, as to extent of term in penitentiary, where the term is discretionary; but judge not bound by it; no error in so charging. *Jones*, 7 A. 334, 66 S. E. 961.

Refusal to regard, not reviewable. *Gaskins*, 12 A. 97, 76 S. E. 777.

Error cured by jury's recommendation "to mercy." *Ripley*, 7 A. 679, 67 S. E. 834. Recommendation "to mercy," equivalent to recommendation of misdemeanor sentence, on indictment for felony, when. *Ib.*

Error in not charging jury on their power to recommend misdemeanor sentence; direction of affirmance if judge should so reduce punishment. *Glover*, 7 A. 629, 67 S. E. 687.

Jury's right to make; judge's statement to jury in answer to question as to, not a recharge; at most a harmless irregularity. *Miller*, 13 A. 440, 79 S. E. 232.

Jury's right to recommend misdemeanor punishment, proper instruction as to. *Gaskins*, 12 A. 97, 76 S. E. 777.

Error in omitting charge that court could disregard jury's recommendation as to (on conviction of assault with intent to murder). *Gaskins*, 12 Ga. App. 97, overruled. *Taylor*, 14 A. 492, 81 S. E. 372.

In charging jury as to their right to recommend a misdemeanor punishment, they should be informed that the recommendation will not be effective unless approved by the judge; instruction here was sufficient. *Frazier*, 15 A. 365, 83 S. E. 273; *Bragg*, 15 A. 368, 83 S. E. 274; *Swain*, 15, 445, 83 S. E. 642; *Braxley*, 17 A. 198, 86 S. E. 425.

Length of time the accused was in jail before trial, not proper for counsel to state to jury, in requesting that they recommend misdemeanor punishment in event of conviction. *Cason*, 16 A. 820, 86 S. E. 644.

New trial not required by affidavits of jurors that they would not have agreed to verdict of guilty if they had not thought that the recommendation which was a part of the verdict would reduce the punishment. *Turner*, 20 A. 165, 167, 92 S. E. 975.

No merit in ground of motion for new trial, that "the jury did not want to find the defendant guilty," because they recommended him to the mercy of the court. *Cheek*, 22 A. 788, 97 S. E. 203.

As to punishment for murder. *Hugle*, 147/35, 92 S. E. 646.

Of life imprisonment instead of death. *Elder*, 143/383, 85 S. E. 197.

Of life imprisonment, charge as to. *Cyrus*, 102/616, 29 S. E. 917.

Of imprisonment for life, discretion of jury as to. *Brown*, 105/640, 31 S. E. 557; *Battle*, 105/704, 32 S. E. 160; *Taylor*, 105/781, 31 S. E. 764.

Of life imprisonment, power of jury as to. *Calvin*, 118/78, 44 S. E. 848.

Of life imprisonment, for murder, right of jury as to, unqualified. *Cohen*, 116/573, 42 S. E. 781.

To mercy in capital case, for jury alone. Charge criticised, but not reversible error. *Hackett*, 108/41, 33 S. E. 842.

Jury must be made aware of their right to recommend. *Taylor*, 110/151, 35 S. E. 161.

To mercy, legal effect of. *Tillman*, 136/59, 62, 70 S. E. 876.

Of life imprisonment for murder, proper charge to jury as to. *Williams*, 119/426, 46 S. E. 626.

To mercy, in verdict of manslaughter; court not required to charge as to effect of. *Lewis*, 129/731, 59 S. E. 782.

In case of murder is in jury's discretion; omission not held error on review. *McCrary*, 137/784, 74 S. E. 536.

Testimony of enormity of offense considered on. *Hart*, 141/672, 81 S. E. 1108.

Punishment of felony as for misdemeanor, right to recommend, on violation of liquor law. *Yaughan*, 148/517, 97 S. E. 540.

Reformation of sentence, so as to conform to verdict. *Brannon*, 21 A. 328, 94 S. E. 259.

Reformatory, sentence to, with provision for immediate confinement in jail, how construed. *Jackson*, 145/223, 88 S. E. 819.

Robbery, by sudden snatching, punishment for, is prescribed by § 149 of Penal Code. *Jones*, 18 A. 8, 89 S. E. 342.

Sales, punishment as part of regulation of. *Stanley*, 135/864, 70 S. E. 591.

Second conviction, sentence of, allegation and proof as to. *McWhorter*, 118/55, 44 S. E. 873.

Seduction; sentence directing payment of part of fine to ordinary, for use of prosecutrix (in case of one charged with seduction and convicted of fornication) was void as to that part; but defendant paying it was not entitled to recover it. *Smith*, 21 A. 650, 94 S. E. 860.

Punishment for. *Wooten*, 23 A. 768, 99 S. E. 316.

Severe punishment no reason for reviewing jury's finding on facts, if supported by any testimony. *Plummer*, 1 A. 507, 57 S. E. 969.

Statute defining offense, but not prescribing punishment, effect of. *Smith*, 15 A. 541, 83 S. E. 886; *Barker*, 117/433, 43 S. E. 744. Code section defining offense but not prescribing punishment. *Jenkins* 13 A. 695, 79 S. E. 861 In such case "jeopardy of liberty" is created by trial, if the offense involves moral turpitude, since conviction would deprive of liberty to vote, etc. *Jenkins*, 14 A. 276, 80 S. E. 688.

Larceny from house, as defined in P. C. § 175, is punishable under §§ 177, 178, 179. *Jones*, 19 A. 67, 90 S. E. 981.

Strict construction of, as to penalty. *Weaver*, 17 A. 738, 88 S. E. 414.

Abrogation of penalty, by amendment separating penalty clause from offense, when additional offense was inserted in statute. *Id.*

Suspension of sentence, unauthorized; probation law not applicable. *Avery*, 22 A. 746, 97 S. E. 204; *Daniel*, 10 A. 830, 74 S. E. 574; *Norman*, 12 A. 698, 78 S. E. 256.

When no jurisdiction to suspend sentence. *O'Dwyer*, 133/824, 67 S. E. 106.

Trial judge has no authority to indefinitely suspend imposition of punishment. *Hancock*, 140/688, 79 S. E. 558.

Oral suspension of sentence did not render rearrest and confinement of convict illegal. *O'Dwyer*, 133/824, 67 S. E. 106.

Sentence not suspended by statement of judge in passing it. *Roberts*, 137/439, 73 S. E. 654.

Limitation of judge's power as to, *Neal*, 104/509, 30 S. E. 858, 42 L. R. A. 190, 69 Am. St. R. 175.

Not authorized, except as incidental to review. *Gordon*, 126/585, 55 S. E. 489; *Wall*, 135/425, 69 S. E. 548; *Roberts*, 137/439, 73 S. E. 654; *Daniel*, 137/827, 74 S. E. 260; *Hancock*, 140/688, 79 S. E. 558; *Cook*, 146/704, 92 S. E. 212.

To await decision of Supreme Court; when not compelled by mandamus. *Cribb*, 119/298, 46 S. E. 110.

Term of punishment may be entered on voluntarily by convict before entry of remitter. *Wiggins*, 112/746, 38 S. E. 86.

Service of sentence begun before remitter filed, but computed from time of such filing. *Wiggins*, 114/64, 39 S. E. 865.

Punishment to begin at expiration of term fixed by previous sentence. *Flagg*, 11 A. 41, 74 S. E. 562. Merger of sentences. *Id.*

Sentences concurrently served, on conviction of several offenses, unless otherwise stated in judgment. *Shambelin*, 148/592, 97 S. E. 520.

Sentence where the accused is convicted of more than one offense; merger

of punishment where sentences do not show that one is to begin after expiration of the other. **Fortson**, 117/149, 43 S. E. 492. See **Simmons**, 117/306, 43 S. E. 780, 61 L. R. A. 749.

Sentence where the accused is convicted of more than one offense; principle ruled in **Fortson**, 117/149, not applicable where the convictions are in different courts. **Hightower**, 121/159, 48 S. E. 969.

Sentence of imprisonment in chain-gang, when not considered as served out after lapse of time. **Neal**, 104/509, 30 S. E. 858, 42 L. R. A. 190, 69 Am. St. R. 175.

Time for payment of fine. **Abram**, 10 A. 137, 72 S. E. 923.

Reasonable time for payment of fine; conflicting provisions, when disregarded. **Dunaway**, 127/690, 55 S. E. 483.

Sentence too hastily pronounced, where pronounced immediately on announcement of verdict, and before polling of jury could be demanded. **McCullough**, 10 A. 403, 73 S. E. 546.

Unlawful qualification of sentence should be ignored. **Neal**, 104/509, 30 S. E. 858, 42 L. R. A. 190, 69 Am. St. R. 175.

Vagrancy, when sentence legal under law as existing before act of 1903 as to. **Baker**, 118/787, 45 S. E. 617.

Void sentence, liability for services under. **Mayor &c. of Brunswick**, 14 A. 316, 80 S. E. 730.

Sentence void in part, enforceable as to other part. **Smith**, 21 A. 650, 94 S. E. 860.

9. BONDS AND RECOGNIZANCES.

Amount of penalty, judgment requiring bond not rendered illegal by limiting. **Swint**, 8 A. 753, 70 S. E. 144.

Bail, exceptions to denial of, dismissed, on affirmance of refusal of new trial. **Fountain**, 23 A. 123, 98 S. E. 183.

Bail-trover, bond given in, no reason for releasing on habeas corpus person prosecuted for obtaining the property un-

der false pretenses. **Barranger**, 103/465, 30 S. E. 524, 68 Am. St. R. 113. **Bastardy**, bond in, what required. **Johnson**, 102/613, 29 S. E. 916; **Martin**, 127/39, 56 S. E. 79.

Capital case, discretion in refusing bail in, not controlled, unless flagrantly abused. **Jernagin**, 118/307, 45 S. E. 411. Testimony as to, when irrelevant on trial for murder. **Greason**, 118/808, 45 S. E. 615.

Cause of arrest, recognizance must show, on face of bond. Particularity of statement, what not required. **Rogers**, 138/750, 75 S. E. 1131.

Certiorari bond, in case from police court, what required. **Allen**, 7 A. 99, 66 S. E. 255; **Roach**, 7 A. 171, 66 S. E. 484; **Scott**, 7 A. 689, 67 S. E. 846; **Williams**, 3 A. 445, 60 S. E. 113.

Civil proceeding, forfeiture of recognizance by scire facias is. **Vaughan**, 113/9, 38 S. E. 352.

Constitutional provision as to forfeiture for crime, bond not violative of. **City of Albany**, 11 A. 745, 76 S. E. 105.

Cosurety not released because rejected bond was strengthened and accepted without his knowledge. **Keilsohn**, 144/367, 87 S. E. 297.

County, where arrest made on warrant from other county, no admission to bail in. **Weatherly**, 139/122, 76 S. E. 853.

Criminal law, bond not to violate, validity of. **City of Albany**, 11 A. 745, 76 S. E. 105.

Defenses against forfeiture of recognizance, when not sustainable. **Youmans**, 141/795, 82 S. E. 231; **Cleveland**, 141/829, 82 S. E. 243.

Surety voluntarily executed bond with knowledge of character of offense alleged and of contents of indictment. **Mason**, 3 A. 348, 60 S. E. 4.

Description of offense in recognizance, what sufficient. **Vaughan**, 113/11, 38 S. E. 352.

Discretion in refusing bail, not abused. **Vanderford**, 126/67, 54 S. E. 822, 9 Ann. Cas. 617; **Shuler**, 126/73, 54 S. E. 822; **Maddox**, 18 A. 712, 90 S. E. 377; **E. 965**.

As to refusal of bail, while motion for new trial was pending, not abused. **Nobles**, 18 A. 713, 90 S. E. 377.

Felony, admission to bail, not demandable as of right by one convicted of. **Vanderford**, 126/67, 54 S. E. 822, 9 Ann. Cas. 617.

Forcibly bringing accused into court before forfeiture of recognizance, whether ground for release. **Oglesby**, 121/602, 49 S. E. 706.

Forfeiture of recognizance. Direction of scire facias; service; judgment against bail without serving principal; surrender of bail by principal. **Fryer**, 142/81, 82 S. E. 497.

Invalid amendment of scire facias. **Sterne**, 145/778, 89 S. E. 828.

Accused ordered brought into court and tried, without steps taken for bond forfeiture, when not cause for new trial. **McDaniel**, 103/268, 30 S. E. 29.

Giving of bond encouraged. **Hill**, 118/23, 44 S. E. 820.

Indictment fatally defective, defense to forfeiture of recognizance. **Marks**, 4 A. 130, 60 S. E. 1016.

Which is not void, forfeiture of recognizance not prevented by attacking. **Williams**, 119/179, 45 S. E. 989.

Is part of record on sci. fa. to forfeit recognizance. **Taylor**, 133/638, 66 S. E. 792.

Invalidity of, as defense to forfeiture of recognizance. Sufficiency of bond, and of scire facias. **Mason**, 3 A. 348, 60 S. E. 4.

Insufficiency of, judgment absolute on forfeiture of recognizance set aside for. **Taylor**, 133/638, 66 S. E. 792.

Recognizance not forfeited on extrinsic evidence of essential fact not alleged by. **Rogers**, 138/750, 75 S. E. 1131.

Judge disqualified, bond forfeiture by, in case in which the bond was given, illegal. **Marks**, 4 A. 130, 60 S. E. 1016.

Judgment absolute on forfeiture of recognizance, was not premature, though case not marked in default. **Robinson**, 146/257, 91 S. E. 31.

On recognizance or appearance bond, not to be entered against bail until record shows opportunity of producing body or showing cause. **Wellmaker**, 3 A. 792, 60 S. E. 464.

On recognizance, not granted, if no indictment or accusation pending when order nisi granted. **Braxton**, 112/459, 37 S. E. 710.

Law and practice as to forfeiture of recognizance. **Perkins**, 1 A. 250, 58 S. E. 133.

Legislature may prescribe obligee in bond, whether person or court. **Morton**, 118/786, 45 S. E. 616.

Motion to set aside judgment sci. fa. to forfeit recognizance, is not a criminal proceeding. **Taylor**, 133/638, 66 S. E. 792.

Offenses not named in recognizance, what covered; bond to answer for larceny from person, forfeitable on indictment for simple larceny. **Wells**, 121/368, 49 S. E. 319.

Offer to waive presence and plead guilty, forfeiture of recognizance not prevented by. **Wells**, 121/386, 49 S. E. 319.

Peace bond, breach of, by calling one a liar and raising a stick to strike him. **Rumsey**, 5 A. 802, 63 S. E. 921.

Rearrest for same offense, recognizance must be duly forfeited, and fresh warrant issued, to authorize. **Sherman**, 2 A. 686, 58 S. E. 1122.

Refusal to give bond, not gist and no part of the offense (vagrancy). **Morton**, 118/786, 45 S. E. 616.

Relationship between principal and prosecuting officer, when forfeiture of recognizance not prevented by. **Salter**, 125/760, 54 S. E. 685.

Rule nisi amendable by changing recital of date of bond. **Marks**, 4 A. 129, 60 S. E. 1016.

Sealed recognizance, authority to execute, must be sealed. **Overman**, 102/750, 29 S. E. 758.

Scire facias, recognizance not attached to, demurrer passed on solely by that writ. Bond or aliunde evidence not looked to. **Candler**, 112/459, 37 S. E. 715.

Specified offense, or such other as may be returned, recognizance to answer for, held to that specified. *Carson*, 142/667, 83 S. E. 523.

State, bond to appear and answer indictment, payable to the Governor and successors, is a contract with. Not void though executed on Sunday. *Adams*, 114/151, 39 S. E. 893.

Sufficient statement in recognizance, of court, and of offense of which principal is charged. *Wellmaker*, 3 A. 792, 60 S. E. 464.

Sureties, after recognizance forfeited and scire facias issued, have until case is called at next term, to produce principal. Failing then, without sufficient excuse, judgment absolute rendered. *Freeman*, 112/648, 37 S. E. 886.

On recognizance, in defense to scire facias to forfeit, may set up that indictment against principal is fatally defective, in that it charges no offense. *Candler*, 113/309, 38 S. E. 825.

Bound for appearance of accused at current term; verdict properly directed. *Sampson*, 147/426, 94 S. E. 558.

Allowed to set up that indictment was void. *Marks*, 4 A. 130, 60 S. E. 1016.

Right of, to recapture principal. *Coleman*, 121/594, 49 S. E. 716.

Relief of, on recognizance; legislative act not invalid. *Baldwin*, 145/199, 88 S. E. 923.

No judgment on recognizance, without due service of scire facias on surety, if resident of county, at least twenty days before return term. *Braxton*, 112/459, 37 S. E. 710.

Objections by, to admission of evidence, on forfeiture, were properly overruled. *Kirkland*, 114/739, 40 S. E. 734.

Transfer of case to another court; sureties on bail-bond chargeable with knowledge of transfer. *Marks*, 4 A. 129, 60 S. E. 1016.

Of indictment and bail-bond to another court; jurisdiction of forfeiture in the latter; sureties chargeable with V. II— 1.

knowledge of transfer. *Marks*, 4 A. 129, 60 S. E. 1016.

Venue changed, obligation of bail. *Johnston*, 118/312, 45 S. E. 381; 46 S. E. 488.

Waiver of commitment trial by giving bond. *Hopkins*, 5 A. 700, 63 S. E. 719.

Witness, bail for appearance of, when court may require. *Crosby*, 8 A. 463, 69 S. E. 582. As to bail, see *Bonds*.

CRIMINATION OF SELF. See *Constitutional Law*; *Criminal Law*; *Evidence*.

CRITICISM. See *Argument*; *Attorneys at Law*; *Charge to Jury*.

CROPS. See *Fertilizers*; *Homestead*; *Landlord and Tenant*.

CROSS-ACTION. See *Actions*; *Equity*; *Pleading*.

CROSS-BILL. See *Equity*; *Practice in Courts of Review*.

CROSS-EXAMINATION. See *Witness*.

CROSS-OBLIGATIONS. See *Contracts*.

CRUELTY. See *Criminal Law*; *Divorce*; *Evidence*.

CROSSINGS, CROSS-TIES. See *Railroads*.

CURSING. See *Criminal Law*.

CUSTODY. See *Arrest*; *Divorce*; *Habeas Corpus*; *Parent and Child*; *Trover*.

CUSTOM. See *Banks*, catchwords "Course of dealing;" *Contracts*; *Evidence*; *Master and Servant*; *Negligence*; *New Trials*; *Notice*; *Payment*; *Railroads*; *Warehousemen*.

DALTON. See *Municipal Corporations*.

DAM. See *Damages*; *Mill-Dam*; *Waters*.

DAMAGES.

§§ 4403 et sq., 4502 et sq.

See *Actions*; *Carriers*; *Contracts*; *Insurance*; *Master and Servant*; *Municipal Corporations*; *Negligence*; *Railroads*; *Trover*.

Accident purely, no basis to recover. *McEwen*, 127/246, 56 S. E. 289.

Accord and satisfaction; issue of fact on receipt signed by illiterate person. *Thomas*, 124/749, 52 S. E. 801.

Not defeated by broken promise in parol. *Smith*, 131/470, 62 S. E. 673.

Reformation of contract for omission of material terms. *Dannelly*, 131/694, 63 S. E. 257.

Accrued, must be. *Bass*, 127/424 56, S. E. 465, 12 L. R. A. (N. S.) 489.

"Act of God," as defense to suit for. See *Negligence*.

Action construed. *Ex contractu*; tort waived. *Shippey*, 17 A. 127, 86 S. E. 407; *Bowers*, 17 A. 779, 88 S. E. 703.

Construction; whether *ex contractu* or *ex delicto*. *Henderson*, 21 A. 297, 298, 94 S. E. 317; *Dawson Cotton Oil Co.*, 21 A. 688, 94 S. E. 1037; *Fain*, 22 A. 193, 95 S. E. 752.

Construed so as to uphold jurisdiction and recovery. *Dawson Cotton Oil Co.*, 21 A. 692, 94 S. E. 1037; *Southern Ry. Co.*, 20 A. 673, 93 S. E. 254.

Ex delicto. *Lamb*, 17 A. 5, 86 S. E. 252.

Ex delicto, not supported by proof of damages *ex contractu*. *Echols*, 17 A. 49, 86 S. E. 91.

In name of holder of legal title to property injured; not of subsequent purchaser. *Delgado Mills*, 144/175, 86 S. E. 550; *Pee Dee Mfg. Co.*, 144/176, 86 S. E. 551.

In tort, not founded on contract. *Howard*, 9 A. 617, 71 S. E. 1017. See catchwords "*Ex contractu*," *infra*.

Not construed as for damages, in absence of prayer therefor. *Adair & McCarty Bros. Inc.*, 20 A. 811, 93 S. E. 542. Cf. *Houze*, 20 A. 438, 93 S. E. 16.

See catchword "*Election*," *infra*.

Actual, not necessarily limited to loss of money or of ability to earn. *Ga. So. Ry. Co.*, 130/697, 61 S. E. 718.

Additional, for pain, etc. *Savannah & Ry. Co.*, 114/764, 40 S. E. 699.

Not allowed on mere negligence without aggravation. *Southern Ry. Co.*, 138/32, 74 S. E. 778; *Wadley*, 138/276, 75 S. E. 153.

Not a measure of assessment. *Georgia Ry. & Co.*, 1 A. 833, 58 S. E. 88.

Not applicable to negligent tort without physical trespass. *Southern Ry. Co.*, 101/263, 28 S. E. 847; 105/316.

Not supported by evidence. *Southern Ry. Co.*, 132/812, 65 S. E. 131.

To deter repetition of trespass, or to compensate for wounded feelings. Aggravating circumstances. *Jacobus*, 107/518, 33 S. E. 853, 73 Am. St. R. 141.

Trespass on land, not recovered for. *Stovall*, 139/244, 77 S. E. 29.

Vide catchwords "*Exemplary*," "*Punitive*," *infra*.

Administrator's misdeeds, estate not liable for. *Mallard*, 123/872, 876, 51 S. E. 712.

Non-liability in punitive damages for tort of decedent. *Morris*, 126/467, 54 S. E. 1045, 115 Am. St. R. 105.

Admission did not raise liability for, where in law there was no liability. *Cook*, 23 A. 284, 98 S. E. 92.

See catchword "*Ratification*," *infra*.

Agent. Factor's breach of duty, measure on. *Wood*, 10 A. 735, 73 S. E. 1999.

Liable for misfeasance or negligence; not ordinarily for mere non-feasance. *Kimbrough*, 119/201, 45 S. E. 977.

See catchword "*Partnership*," *infra*; *Principal and Agent*.

Aggravation, amendment alleging, allowable. *Sheftall*, 133/488, 66 S. E. 253, 27 L. R. A. (N. S.) 442.

Circumstances of, in expulsion of passenger. *Seaboard Air-Line Ry.*, 124/357, 52 S. E. 427, 4 L. R. A. (N. S.) 472. In trespass. *Holman*, 8 A. 551, 69 S. E. 1084. Not shown: (profanity of train conductor) *Southern Ry. Co.*, 138/32, 74 S. E. 778. (car driver's conduct) *Wadley*, 138/276, 75 S. E. 153; *Southern Ry. Co.*, 132/812, 65 S. E. 131.

Continued failure of carrier to provide seats, as circumstance of. *Lyndon*, 3 A. 534, 60 S. E. 278.

Effect on plaintiff's family, unknown to defendant, not treated as. *Freeman*, 126/843, 56 S. E. 61, 7 L. R. A. (N. S.) 917.

Gross negligence not amounting to. *Southern Ry. Co.*, 119/148, 45 S. E. 1000.

Irrelevant matters on breach of covenant; bad health, etc. *Lampkin*, 122/410, 50 S. E. 171.

Later act and saying not admissible as. *Binder*, 13 A. 384, 79 S. E. 216.

Of previous injury, as cause for recovery. *City of Moultrie*, 11 A. 649, 75 S. E. 991.

Persistent trespass on land; punitive damages not recovered here. *Stovall*, 139/244, 77 S. E. 29.

Previous occurrences as. *Charleston &c. Ry. Co.*, 16 A. 505, 85 S. E. 804.

Special averment of matters in, when required. *Central of Ga. Ry. Co.*, 122/646, 50 S. E. 473, 69 L. R. A. 119.

Words in, by assailant. *Dannenberg*, 118/885, 45 S. E. 682.

See catchwords "Exemplary," "Punitive," infra.

Air pollution from nuisance, as element of. *Central Georgia Power Co.*, 141/172, 186, 191, 196, 198, 80 S. E. 636, 642, 645, 647, 648; 143/776, 85 S. E. 945; 144/145, 86 S. E. 324; *Towaliga Falls Power Co.*, 6 A. 749, 65 S. E. 844; 19 A. 347, 91 S. E. 442; *Holman*, 149/345, 100 S. E. 207.

Allegations not too meager and indefinite, in case of damage to land and

crop, here. *Parrish*, 21 A. 275, 279, 94 S. E. 315.

Too general; demurrer definite. *Dublin Hame Works*, 128/399, 57 S. E. 683.

See catchword "Pleading," infra.

Alternative prayer for, in action for specific performance. *National Life Insurance Co.*, 148/757, 98 S. E. 266.

Amendment adding prayer for, allowable. *Fitzpatrick*, 131/693, 63 S. E. 213.

Alleging injury to peace, happiness, etc., allowable. *O'Neal*, 143/291, 84 S. E. 962.

Amount, amendment as to. *Cook*, 22 A. 48, 95 S. E. 376.

Cannot revive cause for, after dismissal of action on demurrer, where no exception taken. *Turner*, 148/17, 95 S. E. 696.

Damages from trespass after suit and pleading may be alleged by. *Becker*, 133/865, 67 S. E. 92.

Exemplary damages declared by. *Southern Ry. Co.*, 129/665, 59 S. E. 802; *Pratt Eng. Co.*, 142/401, 83 S. E. 107. Larger sum may be claimed. *Seaboard Air-Line Ry.*, 142/381, 82 S. E. 1066; *W. & A. R. Co.*, 1 A. 235, 57 S. E. 916.

New and distinct cause not declared here. *Causey*, 106/193, 32 S. E. 138.

Of prayer for, directed on review. *Glawson*, 9 A. 459, 71 S. E. 747.

On breach of contract, when not allowed. *Lawrence*, 144/112, 86 S. E. 218.

See catchword "Pleading," infra.

Amount; conclusion of witness, without basal facts, not received. *Cross*, 123/817, 51 S. E. 704.

Error in limiting, immaterial where no recovery obtained. *Creswell*, 23 A. 190, 97 S. E. 869.

Exceeding allegation; evidence admissible for what. *City El. Ry. Co.*, Co., 121/663, 49 S. E. 724.

Evidence must indicate. *Mayor &c. of Macon*, 113/1112, 39 S. E. 446.

Indefinite, no basis of recovery. *Keene*, 23 A. 265, 97 S. E. 893.

Insufficient allegations as to. *Central of Ga. Ry. Co.*, 22 A. 594, 96 S. E. 707.

Jury may reduce; not bound by testimony. *Cross*, 123/820, 51 S. E. 704.

Less found than alleged and proved, no cause of complaint by defendant. *Pullman Co.*, 126/610, 55 S. E. 933, 9 L. R. A. (N. S.). 407.

Limited to sum given in pleading. *Pitts*, 20 A. 143, 92 S. E. 775.

Must, be proved. *Western Union Tel. Co.*, 113/1017, 39 S. E. 443, 56 L. R. A. 741; *James*, 115/313, 41 S. E. 585.

New trial may be limited to fixing. *Seaboard Air-Line Ry.*, 129/796, 59 S. E. 110.

New trial on unwarranted finding. *Ketron*, 130/541, 61 S. E. 113.

Not changed by striking name of one of joint defendants. *A., B. & A. R. Co.*, 9 A. 647, 72 S. E. 63.

Not determined on interlocutory hearing. *Chestatee Pyrites Co.*, 118/255, 45 S. E. 267.

Should be specified in pleading. *Daniel*, 9 A. 842, 72 S. E. 438.

Suit held to be for \$3,000, not \$25,000. *Barber*, 21 A. 257, 94 S. E. 280.

Too small, as cause for new trial. *Anglin*, 128/469, 57 S. E. 780.

Unreasonable and disproportionate to the injury: \$750 for remarks of conductor, alleged to be harsh and insulting to passenger. *Southern Ry. Co.*, 22 A. 294, 95 S. E. 1007.

Verdict not objectionable for. *Minter*, 5 A. 129, 62 S. E. 731.

See catchwords "Excessive," "Inadequate," "General," "Measure," *infra*; *Jurisdiction*; *Verdicts*.

Animal, measure on injury to. *Southern Ry. Co.*, 8 A. 111, 68 S. E. 623.

Frightened, liability for consequent injury. *Corley*, 21 A. 219, 223, 93 S. E. 1015.

See catchwords "Dog," "Hog," "Expense," "Horse," "Livery-stable," "Mule," *infra*; *Railroads*.

Annoyance and discomfort from bad odors, as elements for recovery. *Jones*, 6 A. 506, 65 S. E. 361.

Inconvenience, matters producing, not elements of damage; admissible as illustrative. *Chattahoochee Valley Ry. Co.*, 9 A. 83, 70 S. E. 683.

Inconvenience must be such as interferes with right. *Atlantic & C. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. Cas. 734. Or depreciates property value. *Atlantic & C. Ry. Co.*, 125/329, and *cit.*, 54 S. E. 148.

Worry, no recovery for. *Georgia Ry. & C. Co.*, 1 A. 833, 58 S. E. 88.

Anticipatory, from contract breach; rule stated. *Phosphate Mining Co.*, 20 A. 660, 93 S. E. 532; *Prince* 23 A. 660, 99 S. E. 132.

See catchwords "Contract," "Notice" *infra*.

Apportionment; both parties at fault. *Savannah & C. Ry. Co.*, 121/392, 49 S. E. 308; *Southern Cotton Oil Co.*, 125/370, 54 S. E. 368; *Atlantic & C. R. Co.*, 125/456, 54 S. E. 622; *Dethrage*, 125/803, 54 S. E. 654; *Southern Ry. Co.*, 128/366, 57 S. E. 702; *Southern Ry. Co.*, 128/627, 58 S. E. 180; *Wrightsville & C. R. Co.*, 129/204, 58 S. E. 769.

Charge to jury, considered. *Southern Cotton Oil Co.*, 22 A. 155, 95 S. E. 765.

Erroneous refusal to instruct jury. *Southern Express Co.*, 23 A. 224, 97 S. E. 860.

In case of mutual negligence. *Central of Ga. Ry. Co.*, 23 A. 696, 99 S. E. 235.

Joint trespass to property, not person or reputation. *Glore*, 131/481, 62 S. E. 580.

Joint trespassers not entitled to. *Ivey*, 124/159, 52 S. E. 436, 110 Am. St. R. 160.

Life-tenant and remainderman, between. *W. & A. R. Co.*, 129/526, 59 S. E. 266.

Omission to charge jury was not error, without proper plea, where no request to charge. *Social Circle Cotton Mill Co.*, 23 A. 605, 99 S. E. 238.

Rule stated, with illustration. *Georgia Ry. &c. Co.*, 20 A. 454, 461, 93 S. E. 62.

Subject to rule of no recovery on failure to exercise due care. *Southern Ry. Co.*, 128/627, 58 S. E. 180.

See catchword "Diminution," *infra*; *Negligence*.

Arbitration agreement, for breach of. *McKenzie*, 123/72, 51 S. E. 34.

Of amount, as prerequisite to suit. *Adams*, 123/659, 51 S. E. 638.

Stipulation for, did not prevent resort to court. *Lawrence*, 131/840, 63 S. E. 631, 19 L. R. A. (N. S.) 966, 15 Ann. Cas. 1097.

Submission to, comprehended issue of damage to property. *Lively*, 130/106, 60 S. E. 264.

Arrest and imprisonment, false; mitigation of recovery. *Rogers*, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64, Ann. Cas. 1914A, 1017.

Under attachment for contempt, no action lies for. *Butler*, 140/579, 79 S. E. 456.

Unlawful, cause for assessing. *Holiday*, 12 A. 779, 78 S. E. 482; see *Bright*, 12 A. 364, 77 S. E. 372.

Ascertainment difficult or impossible, from delay. *Mayor &c. of Washington*, 132/849, 65 S. E. 80.

Assault and battery, liability for. *McNatt*, 117/898, 45 S. E. 248.

Elements of damages. *May Bros. Inc.*, 23 A. 33, 97 S. E. 277.

Female assaulted by carrier's servant; recovery. *Savannah &c. Ry. Co.*, 103/125, 29 S. E. 607, 40 L. R. A. 483, 78 Am. St. R. 85.

Measure of recovery for. *Beckworth*, 6 A. 859, 65 S. E. 1075.

Pleas in justification and mitigation. *Berkner*, 116/954, 43 S. E. 463, 60 L. R. A. 559.

Recovery authorized; exceptions overruled. *Rounsaville*, 19 A. 336, 91 S. E. 446.

Words as defeat or mitigation of recovery. *Garrett*, 7 A. 744, 67 S. E. 1049.

Worldly circumstances of the parties not considered in estimating damages. *Vickery*, 21 A. 732, 94 S. E. 1043.

Assignable, right to recover for trespass is not; does not run with land. *Allen*, 107/838, 33 S. E. 696.

Assignment of cause of action for. *Benjamin-Ozburn Co.*, 13 A. 636, 79 S. E. 753; *Sullivan*, 149/96, 99 S. E. 533.

Attachment, damages from wrongful seizure under. *Speth*, 6 A. 630, 65 S. E. 580; *Maxwell*, 9 A. 745, 72 S. E. 292; *McCormick*, 13 A. 61, 78 S. E. 779.

Dismissed; liability on bond. *Oakes*, 121/317, 48 S. E. 942.

Levy on property not of defendant; liability. *Farmers &c. Bank*, 122/67, 49 S. E. 816.

Attorney's advice no relief against liability; redress to client by counsel. *Luke*, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559.

Attorney's fees as part of. *Walden*, 105/277, 31 S. E. 172.

Allegations not sufficient. *Malone &c. Co.*, 6 A. 115, 64 S. E. 666.

Bad faith, etc., essential to recovery. *Mohr-Weil Co.*, 109/579, 34 S. E. 1005; *Allen*, 113/107, 38 S. E. 322; *Clarke*, 115/320, 41 S. E. 581; *Traders Ins. Co.*, 118/381, 45 S. E. 426; *Georgia R. &c. Co.*, 118/723, 45 S. E. 600; *Edwards*, 121/374, 49 S. E. 279; *Central of Ga. Ry. Co.*, 122/12, 49 S. E. 727; *McKenzie*, 123/72, 75 S. E. 34; *Mallard*, 123/872, 876, 51 S. E. 712.

For bad faith (carrier and passenger). *Georgia R. &c. Co.*, 7 A. 292, 66 S. E. 961.

For capricious refusal to surrender trunk or check. *Carhart*, 114/632, 40 S. E. 781, 88 Am. St. R. 45.

Must be proved reasonable. *Allen*, 113/107, 38 S. E. 322.

No part of "costs and damages" in bond. *Jones*, 11 A. 181, 74 S. E. 1096.

No part of damages incurred in resisting illegal interference by officers. *Williams*, 137/178, 73 S. E. 255.

Not expended, but liability incurred, recoverable. *Oakes*, 121/317, 48 S. E. 942.

Not ordinarily recoverable on breach of contract. *Lovell*, 145/106, 88 S. E. 569; contra on breach in bad faith. *Mutual Life Ins. Co.*, 131/60, 61 S. E. 1034; *Mendel*, 136/442, 71 S. E. 753.

Recovery against public-service corporation, for breach of duty, denied. *Southern Bell Tel. Co.*, 8 A. 720, 70 S. E. 137.

Recovery, as expense of other litigation. *A. C. L. R. Co.*, 21 A. 215, 216, 94 S. E. 86.

Recovery not warranted by facts. *Pferdmenges*, 117/400, 43 S. E. 695; *Smith*, 117/783, 45 S. E. 394, 97 Am. St. R. 220; *Minnesota Lumber Co.*, 122/20, 49 S. E. 783; *McKenzie*, 123/72, 51 S. E. 34.

Stubborn litigiousness not shown by mere failure to settle claim. *Macon & Co. R. Co.*, 125/88, 54 S. E. 197.

Trespass in bad faith, causing trouble and expense. *Stovall*, 139/243, 77 S. E. 29.

Attorney's fees as. See catchwords "Expenses of litigation," "Insurance," infra.

Attorney's loss of business; damages too remote, here. *Anderson*, 22 A. 368, 95 S. E. 1012.

Avoidance of consequences. See catchword "Lessen," infra; and *Negligence*.

Bad faith and stubborn litigiousness, no recovery for, in separate action. *Atlanta Elevator Co.*, 106/427, 32 S. E. 541.

Contract breach; allegation did not make suit an action ex delicto. *Dawson Cotton Oil Co.*, 21 A. 688, 94 S. E. 1037.

Defined; limited to period before suit. *Traders Ins. Co.*, 118/381, 45 S. E. 426; *Edwards*, 121/374, 49 S. E. 279; *McKenzie*, 123/72, 51 S. E. 34.

Facts not authorizing jury to consider. *Pynetree Paper Co.*, 23 A. 604, 99 S. E. 222.

Instruction to jury inapplicable, in language of C. C. § 4504, save where

entire injury is to peace, happiness, or feelings. *Southern Ry. Co.*, 128/814, 58 S. E. 470.

Meaning of, as basis for recovery of expenses of litigation. *Twin City Lumber Co.*, 22 A. 578, 96 S. E. 437.

Not considered, on negligent omission of duty under contract. *Southern Ry. Co.*, 101/263, 28 S. E. 847; 105/317, 31 S. E. 182; *Georgia R. & Co.*, 117/785, 45 S. E. 70.

See catchwords "Attorney's fees," supra; "Expenses of litigation," "Insurance," infra.

Bailee's liability in. See *Bailments*.

Bank-check, from omission to present, for payment; liability not shown. *Lester-Whitney Co.*, 1 A. 244, 58 S. E. 212.

Measure of recovery for dishonor of; temperate damages, without proof of special. *Hilton*, 128/30, 57 S. E. 78, 11 L. R. A. (N. S.) 224, 10 Ann. Cas. 987.

Bank's refusal to make promised loan, non-liability for. *Swindell*, 3 A. 364, 60 S. E. 13.

Bankruptcy discharge, as affecting claim. *Woodcock*, 18 A. 146, 88 S. E. 989.

Damages on tortious seizure of goods in. *Smith*, 8 A. 262, 68 S. E. 1014.

Beverage deleterious; bottler's liability, and elements of damages. *Martin*, 18 A. 226, 89 S. E. 495.

Bias and prejudice. See catchword "Amount," supra; "Excessive," infra; *Verdict*, catchword "Amount."

Bid at auction sale, measure on refusal to pay. *Smith*, 141/841, 82 S. E. 242.

Forfeiture of deposit by bidder as liquidated damages. *Gulf Paving Co.*, 22 A. 374, 96 S. E. 392; reversed on certiorari, 149/114, 99 S. E. 374.

Bond; action ex contractu, not ex delicto, to recover stipulated damages. *Mumford*, 8 A. 286, 68 S. E. 1075.

Actual damages, not penalty, recoverable. *Scarratt*, 117/784, 43 S. E. 413.

Attachment, liability on bond in. *Oakes*, 121/317, 48 S. E. 942.

Breach of; damages not shown. **Grace**, 10 A. 480, 73 S. E. 689.

Burden of proving amount of damage from breach. **National Building Asso.**, 121/307, 49 S. E. 312.

For delivery of property under levy; liability, and measure of recovery. **Jolley**, 112/342, 37 S. E. 358; **Gregory**, 12 A. 486, 77 S. E. 585; **Redwine**, 18 A. 77, 89 S. E. 163; **Coker**, 18 A. 221, 89 S. E. 187.

Inadequate as substitute for injunction. **Mullis**, 105/465, 30 S. E. 654; **Stoner**, 124/754, 52 S. E. 894; **Hart**, 126/439, 55 S. E. 189.

Injunction in applying for; code requirement not applied if defendant insolvent. **Smith**, 105/106, 31 S. E. 135.

Liability on contract to procure release of surety. **English**, 102/35, 29 S. E. 157.

Recovery not measured by face amount or penal sum recital; limited to actual loss. **Ripley**, 106/422, 32 S. E. 343; (allegation immaterial). **Hatton**, 1 A. 747, 57 S. E. 1044; **Mayor & Co of Brunswick**, 4 A. 722, 62 S. E. 475.

Official; measure of recovery. **Terrill**, 130/633, 61 S. E. 485.

Sheriff's; recovery where special damages claimed were not allowable. **Harris**, 143/498, 85 S. E. 742.

Supersedeas; ascertainment of damages. **Waycross & Co. R. Co.**, 119/983, 47 S. E. 582.

To indemnify against damages surety may incur or sustain, construed. **Williams**, 11 A. 635, 75 S. E. 1067.

Writ of error; measure of recovery. **Waycross Air-Line R. Co.**, 114/727, 40 S. E. 738.

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Bond for title, measure on breach of. **Buck**, 9 A. 656, 72 S. E. 44.

Bridges defective; liability for injuries. See Counties.

Brokerage as an element. **Sims-McKenzie Co.**, 10 A. 743, 73 S. E. 1080.

Building; counterclaim of damages resulting from architect's want of skill, etc. **Block**, 144/145, 86 S. E. 316.

Delay in completing, and in payments. Mutual and dependent covenants. **Chamberlin**, 135/719, 70 S. E. 569, 35 L. R. A. (N. S.) 1223.

Measure of damages from injury to; cost of restoration. **Empire Mills Co.**, 18 A. 253, 89 S. E. 530.

On adjacent lot, and use of it, when no cause to recover. **Long**, 109/28, 34 S. E. 333, 46 L. R. A. 428, 77 Am. St. R. 363.

Unsafe; owner's liability to person injured in entering. **Jones**, 22 A. 717, 97 S. E. 112.

Burial, for interfering with right of. **Wright**, 112/884, 38 S. E. 94, 52 L. R. A. 621. See catchwords "Dead body," *infra*.

Burial-ground, for injury by removing plants from. **O'Neal**, 143/291.

Business, from injury to; recovery limited. **Cooper**, 132/535, 64 S. E. 650.

Business place, for injury to. **DeFoor**, 133/617, 66 S. E. 786.

Loss of business. See catchword "Attorney," *supra*.

Special damage to, by obstruction of street. **Brunswick & Co. R. Co.**, 112/604, 37 S. E. 888, 52 L. R. A. 396. 'By tortious eviction. **Lenney**, 118/427, 45 S. E. 317.

Violation of law, no damages for injury to business conducted in. **Lewis**, 6 A. 419, 65 S. E. 189.

Calculation of value of life. **W. & A. R. Co.**, 22 A. 315, 96 S. E. 17.

Carrier's liability. Delay or non-delivery; measure of damages. **Adams Express Co.**, 138/443, 455, 75 S. E. 596, 601, Ann. Cas. 1913D, 976; **Post**, 138/963, 76 S. E. 45; (contract) **Albany & Co. Ry. Co.**, 137/391, 73 S. E. 637; **Southern Ex. Co.**, 1 A. 294, 57 S. E. 1066; (conversion) **Atlantic Coast Line R. Co.**, 1 A. 351, 57 S. E. 1070; **Ohlen**, 2 A. 323, 58 S. E. 511; **Carr**, 12 A. 830, 79 S. E. 41; (delay partly caused) **Cincinnati & Co. Ry. Co.**, 3 A. 401, 60 S. E. 8; (delivery to claimant without title) **Atlantic & Co. Ry. Co.**, 125/478, 54 S. E. 530; (market value) **Southern Ry. Co.**, 18 A. 767, 90 S. E.

656; (non-delivery in reasonable time) *Wilensky*, 136/892, 72 S. E. 418, Ann. Cas. 1912D, 271.

Expulsion of passenger; measure of recovery. *Southern Ry. Co.*, 104/213, 30 S. E. 732, 69 Am. St. R. 166; *Georgia R. & C. Co.*, 117/785; *Central of Ga. Ry. Co.*, 116/780, 43 S. E. 67.

Failure to furnish cars. *Pennington*, 3 A. 666, 60 S. E. 485.

Freight valuation. *Central of Ga. Ry. Co.*, 124/322, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 110 Am. St. R. 170, 4 Ann. C. 128; *Merchants & C. Co.*, 124/482, 52 S. E. 802.

Fruit shipment, on loss of. *Southern Ry. Co.*, 139/358, 77 S. E. 153.

Live stock, for injury to. *L. & N. R. Co.*, 6 A. 550, 65 S. E. 308.

Misquoting message. *Western Union Tel. Co.*, 5 A. 809, 63 S. E. 934.

Not stopping train, extent of liability for. *Southern Ry. Co.*, 105/316, 31 S. E. 182; *Central of Ga. Ry. Co.*, 106/176, 32 S. E. 77, 43 L. R. A. 402, 71 Am. St. R. 246; *Southern Ry. Co.*, 107/380, 33 S. E. 436.

Omission to forward goods. *Chattanooga So. R. Co.*, 133/127, 65 S. E. 285.

Under freight-tracing law: measure.

Davis, 136/279, 71 S. E. 428.

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Cause of action defined. *Parris*, 128/434, 57 S. E. 692.

Change of. See Amendments.

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Chance, illegal finding by. *City of Columbus*, 102/293, 29 S. E. 749.

Charge of the court on damages. See catchword "Instructions," infra;

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Charitable institution, liability of. See Hospitals.

Check deposited and credited but not collected; no recovery against bank, without proof of damage. *Spooner*, 144/745, 87 S. E. 1062.

Child, measure of parent's recovery for homicide of. Mother's right based on dependence and contribution. *Western*

Union Tel. Co., 6 A. 261, 64 S. E. 1123; (though father living) *Georgia Ry. & C. Co.*, 9 A. 107, 70 S. E. 607; see *Southern Ry. Co.*, 9 A. 533, 71 S. E. 934; *Fuller*, 10 A. 680, 74 S. E. 287; *City of Thomasville*, 17 A. 625, 87 S. E. 923.

Recovery of \$3000 for homicide of boy of six years, not held excessive. *Savannah Electric Co.*, 18 A. 314, 89 S. E. 373.

No recovery where child too young to render service. *Crenshaw*, 15 A. 182, 82 S. E. 767.

Right of one in loco parentis; different measure of recovery. *City of Albany*, 11 A. 573, 75 S. E. 911; *Atkinson*, 13 A. 781, 80 S. E. 29.

Services, recovery by parent for loss of. *James*, 138/415, 75 S. E. 431, 41 L. R. A. (N. S.) 795, Ann. Cas. 1913D, 468; *Braaswell*, 7 A. 167, 66 S. E. 539; (issue of capacity of young child) *Holmes*, 145/172, 88 S. E. 924, s. c. 18 A. 171, 89 S. E. 79.

See Parent and Child.

Circumstances of parties. See catchwords "Worldly circumstances," infra. City court's jurisdiction of action for. *A. C. L. R. Co.*, 21 A. 209, 211, 94 S. E. 86.

Claim in writing, before suit; binding stipulation. *Western Union Tel. Co.*, 113/1017, 39 S. E. 443, 56 L. R. A. 741.

Prerequisite to suit against municipality. *Saunders*, 113/619, 38 S. E. 978; *City of Columbus*, 117/823, 45 S. E. 59. See *Langley*, 118/590, 45 S. E. 486, 98 Am. St. R. 133; *City of Rome*, 135/504, 69 S. E. 707; *Williamson*, 19 A. 784, 92 S. E. 291; *City of Griffin*, 19 A. 818, 92 S. E. 400; *Mayor & C. of Macon*, 16 A. 480, 85 S. E. 684, overruled in *Maryon*, 149/35, 99 S. E. 116.

Too large, no cause to avoid recovery entirely. *City of Atlanta*, 139/393, 77 S. E. 393. See Municipal Corporations.

Combination to injure trade; liability. *Employing Printers Club*, 122/509, 50

S. E. 353, 69 L. R. A. 90, 106 Am. St. R. 137, 2 Ann. C. 694.

Comparative negligence, apportionment of damages in case of. See *Negligence*.

Compensation generally the measure, where injury capable of estimate. *Southern Cotton Oil Co.*, 125/370, 54 S. E. 110.

Compensatory and punitive, distinct. *Georgia Ry. & El. Co.*, 6 A. 645, 65 S. E. 785.

Compensatory only, as a general rule. (Facts here no basis for substantial damages) *A. C. L. R. Co.*, 11 A. 520, 75 S. E. 841. (For mistake resulting in exposure and fright) *Southern Ry. Co.*, 136/282, 71 S. E. 414.

Compromise by plaintiff reducing amount of, no cause for defense. *Patterson*, 15 A. 680, 84 S. E. 163.

Offer held not admissible. *Jenkins*, 7 A. 484, 67 S. E. 124.

See **Accord and Satisfaction**; **Evidence**; **Municipal Corporations**, catchword "Notice."

Computation. See catchword "Tables," *infra*.

Conclusion of witness as to, is not evidential. *Copeland*, 21 A. 486, 94 S. E. 633.

Condemnation of property. Ascertainment of compensation under general law. *Town of Poulan*, 123/605, 51 S. E. 657; *Stowe*, 127/421, 56 S. E. 516.

Assessor, reasonable time for selecting. *City of Elberton*, 130/501, 61 S. E. 18.

Easement of sewer; recovery limited. *Potts*, 140/431, 79 S. E. 110.

Elements of damages, and evidence. *Savannah &c. Ry. Co.*, 133/679, 66 S. E. 942; *Central Ga. Power Co.*, 137/120, 72 S. E. 900.

Estimate of value. Evidence admissible. *Central Ga. Power Co.*, 139/1, 417, 76 S. E. 387, 77 S. E. 565, Ann. Cas. 1914A, 880.

Land for public use; measure; benefited by improvement. *Chattahoochee Valley Ry. Co.*, 9 A. 83, 70 S. E. 683.

Land, measure by fair market value of. Relevant and irrelevant matters in estimating. *Atlanta Terra Cotta Co.*, 132/538, 64 S. E. 563; *Central Ga. Power Co.*, 142/662, 83 S. E. 524; *Elbert County*, 16 A. 837, 86 S. E. 651.

Money only awarded; not privilege to remove improvements. *Darien &c. R. Co.*, 132/672, 64 S. E. 785.

Nominal damages only, when allowed. *Georgia R. &c. Co.*, 129/502, 59 S. E. 217.

Opinion evidence admissible in estimating consequential damages. *Central Ga. Power Co.*, 143/10, 84 S. E. 67.

Property enhanced in value by prospective improvement; measure. *Gate City Terminal Co.*, 136/456, 79 S. E. 903.

Railroad benefits and injuries. *Georgia, Fla. &c. Ry. Co.*, 140/42, 78 S. E. 411.

Railroad, land used for. Equitable ascertainment of amount to be paid. *Charleston &c. Ry. Co.*, 105/1, 25, 30 S. E. 972, 70 Am. St. R. 17.

Railroad, street and suburban. *Piedmont Mills*, 131/129, 62 S. E. 52.

Reduction of recovery not required by pending suit of condemnee's tenant. *Central Ga. Power Co.*, 143/10, 84 S. E. 67.

Road abandoned; new county road; measure of damages. *Mallory*, 131/271, 62 S. E. 179.

Scope of verdict on appeal from award. *Darien &c. R. Co.*, 132/672, 64 S. E. 785; *A. B. & A. R. Co.*, 132/725, 64 S. E. 723.

Separate findings, incorrect practice. *Central Ga. Power Co.*, 137/347, 73 S. E. 505.

Telegraph line, land for. Extent of compensatory award. *Postal Tel. Co.*, 124/746, 52 S. E. 803, 3 L. R. A. (N. S.) 333. **Railroad** way for telegraph line; assessment and measure. *Savannah &c. Ry. Co.*, 112/945, 38 S. E. 353; *W. & A. R. Co.*, 138/420, 75 S. E. 471, 42 L. R. A. (N. S.) 225; *L. & N. R. Co.*, 143/331, 85 S. E. 110.

Water-power development; elements in estimating consequential damages. *Flemister*, 140/511, 79 S. E. 148; *Central Ga. Power Co.*, 141/643, 81 S. E. 882.

Condition subsequent, breach of, remediable in damages. Estate not forfeited. *Hilton*, 146/812, 92 S. E. 642.

Conflict of evidence as to cause and extent of injuries, verdict upheld. *Macon &c. R. Co.*, 108/84, 33 S. E. 889.

Conflict of laws. Measure by law of other, State, when applied. *Southern Ry. Co.*, 5 A. 21, 62 S. E. 678.

Confusion of elements in charge to jury, when prejudicial. *Central of Ga. Ry. Co.*, 145/656, 89 S. E. 760.

Of methods for estimating different elements, to be avoided. *Pickett*, 138/177, 74 S. E. 1027, Ann. Cas. 1913C, 1380.

Conjectural. See catchwords "Remote and speculative," *infra*.

Conscience, measure by. See catchword "Enlightened," *infra*.

Consent as avoiding liability for trespass. *Spencer*, 140/632, 79 S. E. 543. Not where unauthorized way used. *Felker*, 140/217, 78 S. E. 847.

As a bar to recovery. *Georgia R. &c. Co.*, 7 A. 293, 66 S. E. 961.

Consequential; loss of time and earnings. *Southwestern R. Co.*, 14 A. 674, 82 S. E. 166.

Not recovered, for damage to land, after giving deed to right of way. *L. & N. R. Co.*, 132/173, 68 S. E. 898; *Seaboard Air-Line Ry.*, 132/181, 63 S. E. 1098.

On condemnation of land for public highway. *Mallory*, 131/271, 62 S. E. 179.

Parent's loss of services, on slander of child. *Hurat*, 114/586, 40 S. E. 764, 88 Am. St. R. 43.

Proof of nature and extent required, with data for estimate. *Postal Tel. Co.*, 124/746, 52 L. R. A. 803, 3 L. R. A. (N. S.) 333.

See catchwords "Condemnation," *supra*; "Profits," "Remote," "Street," *infra*.

Conspiracy to convert securities; sufficient allegations. *National Bank of Sa-*

vannah, 23 A. 736, 99 S. E. 393; 149/67, 99 S. E. 123.

To defraud. See **Fraud**.

Construction of action for, whether ex contractu or ex delicto. *Henderson*, 21 A. 297, 298, 94 S. E. 317; *Dawson Cotton Oil Co.*, 21 A. 692, 94 S. E. 1037.

Contemplation of parties, rule of damages within, applicable to contract breach, rather than tort. *Chappell*, 8 A. 788, 70 S. E. 208; see *Western Union Tel. Co.*, 8 A. 514, 522, 70 S. E. 65.

Rule limiting recovery, when not applied to contract of carriage. *Carr*, 12 A. 830, 79 S. E. 41.

Contingent. See catchword "Remote," *infra*.

Contract, benefit from existing, when no element. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. Cas. 734.

Too indefinite as basis to compute damages. *Hart*, 101/188, 28 S. E. 637.

Contract breach. Accord conditional, no basis of action ex contractu against tort-feasor. *L. & N. R. Co.*, 133/763, 66 S. E. 1088.

Advertising, measure of loss on refusal to furnish matter for. *Georgian Co.*, 12 A. 483, 77 S. E. 585.

Allegation must specify breach, to recover. *State of Ga.*, 136/619, 71 S. E. 1055.

Allegations necessary. *L. & N. R. Co.*, 132/175, 63 S. E. 898.

Allegations sufficient. *Roberts*, 112/456, 37 S. E. 704; (not demurrable) *Southern Granite Co.*, 131/599, 62 S. E. 1038; (not demurrable as a conclusion) *Harris*, 136/47, 70 S. E. 869.

Allegation of title not sufficient to recover difference in market value. *Adams*, 141/418, 81 S. E. 203.

Broker's services. *Bush*, 115/42, 42 S. E. 240.

Building. *Cannon*, 116/452, 42 S. E. 734; *Adams*, 123/659, 51 S. E. 638; *Virginia Bridge &c. Co.*, 2 A. 133, 58 S. E. 322; *Candler Investment Co.*, 4 A. 764, 62 S. E. 479; *Albany Phosphate Co.*, 4 A. 771, 62 S. E. 533; *Christophulos Co.*, 4 A. 819, 62 S. E. 562; *Small*, 4 A. 395, 61 S. E. 831.

Contract breach—(Continued).

Building and rental; measure on non-compliance. **Williams Wagon Works**, 14 A. 158, 80 S. E. 668.

Building, inferior work on. **Dornblatt**, 10 A. 741, 73 S. E. 1085.

Building, refusal to erect, on land sold. **Busbee**, 139/19, 76 S. E. 377.

Building work, measure for preventing completion of. **Campbell**, 6 A. 134, 64 S. E. 571.

Carriage of goods; tort by breach of duty; measure of recovery. **Carr**, 12 A. 830, 79 S. E. 41. See **Carriers**.

Carriage of passenger; measure. **Southern Ry. Co.**, 105/316, 31 S. E. 182.

Cars for shipment not furnished; measure. **Chattanooga So. R. Co.**, 133/127, 65 S. E. 285; **Elberta Peach Co.**, 133/685, 66 S. E. 779; **Southern Ry. Co.**, 133/806, 67 S. E. 85.

Compensation for expense incurred on contract within statute of frauds. **Baucom**, 148/633, 634, 97 S. E. 671.

Compensatory, not punitive damages. **Poland Paper Co.**, 118/461, 45 S. E. 374.

Consequential damages not allowed; rule and exception. **Whitlock**, 142/306, 82 S. E. 886.

Conveyance of land. **McLeod**, 126/167, 54 S. E. 949.

Covenant for support; measure. **Kyle**, 128/387, 57 S. E. 748.

Damages not in contemplation of parties as result of breach. **Oxford Mills**, 6 A. 302, 644, 64 S. E. 1008, 65 S. E. 791; **Alkahest Lyceum**, 6 A. 625, 65 S. E. 580; **Howard**, 9 A. 618, 71 S. E. 1017.

Defective construction; remedy not limited to completing and suing for expense thereof. **Hilliard**, 134/818, 68 S. E. 649.

Defense against account, not sustained. **Kennesaw Co.**, 132/763, 64 S. E. 1087.

Demurrage and brokerage as elements. **Sims-McKenzie Co.**, 10 A. 742, 73 S. E. 1080.

Description of property too vague to identify it. **Nettles**, 141/126, 80 S. E. 630.

Contract breach—(Continued).

Difference in contract and market prices, as measure of damages. **Bainbridge Oil Co.**, 137/741, 76 S. E. 41; **Happ Co.**, 145/836, 90 S. E. 61; **Trigg Candy Co.**, 9 A. 360, 71 S. E. 679; **Farmers Oil &c. Co.**, 10 A. 415, 73 S. E. 350; **Wood**, 10 A. 735, 73 S. E. 1099.

Discharge of servant, remedy and measure of recovery on. (Salesman, refusal to execute orders taken by) **American Agricultural Chemical Co.**, 139/496, 77 S. E. 582; (hotel manager) **Johnson**, 142/351, 82 S. E. 1053; (financial agent) **Citizens Bank**, 143/101, 84 S. E. 465; (trainmaster) **Ga., Fla. & Ala. Ry. Co.**, 12 A. 180, 76 S. E. 1063; (clerk) **Willingham**, 13 A. 253, 79 S. E. 496.

Dual agent, no basis to recover on breach by. **Ramspeck**, 104/772, 30 S. E. 962, 42 L. R. A. 197, 69 Am. St. R. 197.

Earnings probable or prospective, less expenses of performance, as measure. **Mimms**, 9 A. 718, 72 S. E. 271; **Betts Co.**, 14 A. 786, 82 S. E. 474.

Elements of expense not incurred on faith of contract, not recovered by transferee. **Langdale**, 135/669, 70 S. E. 561.

Employment of agents to subdivide and sell land; measure. **McMillan**, 137/63, 72 S. E. 506.

Evidence as basis to recover. **Burch**, 8 A. 555, 69 S. E. 1087.

Evidence of amount essential. **Mill-edgeville Water Co.**, 129/111, 58 S. E. 643.

Exact computation. **Lytle**, 122/459, 50 S. E. 402.

Exclusive sale privilege, measure on breach as to. **Macon Fair Assn.**, 16 A. 534, 85 S. E. 673.

Executory land purchase at private sale; measure. **Cowdery**, 126/786, 55 S. E. 918, 8 L. R. A. (N. S.) 137; **King**, 18 A. 178, 89 S. E. 175.

Expenses and loss of profits, in defense to suit for price. **Gore**, 110/894, 36 S. E. 315.

Expenses of litigation not recovered

Contract breach—(Continued).

on. **McKenzie**, 123/72, 51 S. E. **Mal-lard**, 123/872, 52 S. E. 712.

Failure to deliver instrument as agreed. **Kennedy**, 18 A. 150, 88 S. E. 1000.

Farm, difference between agreed rent and actual rental value. **Palmer**, 2 A. 200, 58 S. E. 362.

Farming operations; measure in contemplation of market price of crops. **Baker**, 130/257, 60 S. E. 551.

Good will of business sold; measure. **Shaw**, 133/446, 66 S. E. 240.

Inferior article installed; measure by sum required to attain conformity. **Dornblatt**, 10 A. 741, 73 S. E. 785.

Injunction in lieu of damages, denied. **Macon Ry. &c. Co.**, 142/455, 83 S. E. 105.

Insurer's agreement to execute supplemental contract after death of insured; measure of damages. **Metro-politan Ins. Co.**, 145/425, 89 S. E. 576.

Items held not recoverable. **Haber &c. Co.**, 118/874, 45 S. E. 696.

Land, breach of contract to convey; measure of damages. **Mobley**, 127/572, 56 S. E. 637; **King**, 145/65, 88 S. E. 960.

Leases, recovery on failure to obtain. **Mitchell**, 3 A. 542, 60 S. E. 295.

Liquidated damages for delay. **Mayor &c. of Washington**, 132/849, 65 S. E. 80.

Market value as basis of measure, instead of amount of money advanced. **Upmago Lumber Co.**, 148/848, 98 S. E. 498.

No basis of recovery for tort. **Mill-edgeville Water Co.**, 129/111, 58 S. E. 643.

Nominal damages recoverable; error in dismissing action. **Anderson**, 18 A. 479, 89 S. E. 631.

Non-delivery of bricks; difference in contract and market prices. **Roddenbery**, 136/187, 71 S. E. 138; **Central Georgia Brick Co.**, 136/693, 71 S. E. 1048.

Non-delivery of cotton; elements and measure of recovery. **Pope**, 1 A. 177, 57 S. E. 949; **Kelly**, 12 A. 794, 78 S. E. 471.

Contract breach—(Continued).

Non-delivery of engine; sufficient allegations of expenses. **Case Machine Co.**, 10 A. 647, 73 S. E. 591.

Non-delivery of goods sold; measure and rules. **Hardwood Lumber Co.**, 134/821, 68 S. E. 724, 32 L. R. A. (N. S.) 192.

Non-payment on delivery of goods; measure. **McCarthy**, 123/762, 56 S. E. 72.

No right to recover alleged damages. **Green**, 138/571, 75 S. E. 670.

Note and security deed, breach of promise to execute; recovery, how limited. **Lovell**, 145/106, 88 S. E. 569.

Note, measure on failure of vendee's transferee to pay. **Stokes**, 143/721, 85 S. E. 895.

Profit that would have accrued, as measure; loss in complying not included. **Jester**, 4 A. 469, 61 S. E. 926.

Putting away power of compliance, as ground of liability. **Greer**, 140/744, 79 S. E. 846.

Quality of goods, measure on inferiority of. **Oxford Mills**, 6 A. 301, 64 S. E. 1008; **Mountain City Mill Co.**, 11 A. 486, 75 S. E. 823.

Railroad passage. **Williamson**, 127/126, 56 S. E. 119. See catchword "Carrier," supra.

Recoupment in action for breach. See catchword "Recoupment," infra.

Recovery limited to amount laid. **Christophulos Co.**, 4 A. 819, 62 S. E. 562.

Recovery limited to material and natural consequences. **Cooper**, 132/535, 64 S. E. 650.

Refusal to accept goods bought; measure of recovery. **Carolina Cement Co.**, 3 A. 483, 60 S. E. 279; **Smith Co.**, 6 A. 522, 65 S. 320; (election to resell) **Bridges Grocery Co.**, 9 A. 189, 70 S. E. 964; **Sims-McKenzie Co.**, 10 A. 742, 73 S. E. 1080; **Ga. Agr. Works**, 11 A. 80, 74 S. E. 718; **Southern Flour &c. Co.**, 11 A. 401, 75 S. E. 439; **American Mfg. Co.**, 13 A. 551, 79 S. E. 485; **Improved Fertilizer Co.**, 15 A. 601, 84 S. E. 132; **Steinhauer**, 16 A. 470, 85 S. E. 677; **Mill Wood**

Contract breach—(Continued).

Co., 17 A. 636, 85 S. E. 943; (expense of selling, when not recovered) **United Roofing &c. Co.**, 18 A. 184, 89 S. E. 177.

Remedy; rescission, no right of. **Chamberlin**, 135/719, 70 S. E. 569, 35 L. A. (N. S.) 1223; **Byrd Printing Co.**, 135/865, 70 S. E. 798, Ann. Cas. 1912A.

Remedy solely in damages on breach of covenant not a condition precedent. **Moore**, 146/197, 91 S. E. 13.

Remote and uncertain damages not in contemplation as result of breach. **Piedmont Wagon Co.**, 4 A. 393, 61 S. E. 835; **Albany Phosphate Co.**, 4 A. 780, 62, S. E. 533; **Christophulos Co.**, 4 A. 821, 62 S. E. 562; **Findlay Brick Co.**, 18 A. 446, 89 S. E. 535. See catchword "Remote," *infra*.

Rental, difference in amount of, as measure. **Baldwin**, 14 A. 828, 82 S. E. 369.

Rental of land; elements for recovery. **McIntosh**, 12 A. 306, 77 S. E. 6.

Sale; measure on buyer's refusal to accept and comply. **Small Co.**, 137/565, 73 S. E. 846.

Sale of goods; measure. **Mountain City Mill Co.**, 109/471, 34 S. E. 565; **McCaw Mfg. Co.**, 115/408, 41 S. E. 664; **Oklahoma Vin. Co.**, 116/140, 42 S. E. 378, 59 L. R. A. 122, 94 Am. St. R. 112. **Bloom**, 116/784, 43 S. E. 54; **Huggins**, 121/311, 48 S. E. 933; **Henderson Elevator Co.**, 126/279, 55 S. E. 50.

Sale of land; measure of damages **Brooks**, 103/713, 30 S. E. 630. See catchword "Land," *infra*.

Sale of land; items of damage adjudicated on demurrer. **Hicks**, 142/524, 83 S. E. 115.

Sale of land; damages too uncertain for enforcement. **Crawford**, 145/550, 89 S. E. 488.

Sales, agreement to make. **Phares**, 136/843, 72 S. E. 344.

Special damages held too vague and speculative. **Cothran**, 123/190, 51 S. E. 285.

Specific performance impossible. **Central Ga. Power Co.**, 139/1, 76 S. E. 387, Ann. Cas. 1914A, 880; 139/417, 77 S. E. 565.

Telephone service refused; what recoverable. **Southern Bell Tel. Co.**, 118/507, 45 S. E. 319; **Haber &c. Co.**, 118/874, 45 S. E. 696.

Tort, breach of duty under contract as basis of action in. **L. & N. R. Co.**, 129/234, 58 S. E. 706.

Tort, breach of exculpatory contract is not. Elements and measure of damages. **L. & N. R. Co.**, 104/692, 30 S. E. 968.

Tort not redressed in same action for breach of contract. **Montgomery**, 140/51, 78 S. E. 413.

Warranty in sale of wire; measure. **John A. Roebling Co.**, 142/465, 83 S. E. 138, L. R. A. 1915B, 900.

Vide catchword "Carrier," *supra*; and **Contracts**,

Contractor, See catchword "Independent," *infra*.

Contractual liability incurred, as measure. **Propeller Tow-Boat Co.**, 124/480, 52 S. E. 766.

Contribution between joint libelors, no right of. **Cox**, 120/104, 47 S. E. 912.

Between joint tort-feasors. **Central of Ga. Ry. Co.**, 9 A. 628, 71 S. E. 1076.

By owner of abutting property. where city liable for injury on street. **Schneider**, 118/610, 45 S. E. 459.

By wrong-doers. **Mashburn**, 117/568 (14), 582, 44 S. E. 97.

Conversion. Credit by actual damage, not face value of collateral securities. **Fisher**, 108/490, 34 S. E. 172.

Damages arising from, not too remote. **A. C. L. R. Co.**, 21 A. 209, 213, 215, 216, 94 S. E. 86.

Liability of agent and principal for. **Alexander**, 143/698, 85 S. E. 831.

Measure of pledgee's liability for. **Citizens Bank**, 132/771, 65 S. E. 81.

Measure on election of money verdict. **Mashburn**, 117/568, 44 S. E. 97.

Negligence distinct from conversion, as to need of proof. **Citizens Bank**, 132/771, 65 S. E. 81.

Of personal property; recovery limited to value of special interest. **Witt**, 145/675 (dissent, 677), 89 S. E. 747.

- Proof essential to recovery.** *Citizens Bank*, 132/771, 65 S. E. 81.
- Tortfeasor not subject to garnishment on, before final judgment for damages.** *Southern Railway Co.*, 148/851, 98 S. E. 541.
- Wrong-doer's liability not reduced to agreed value.** *Georgia So. Ry. Co.*, 121/231, 48 S. E. 807; *Merchants & Co.*, 124/482, 52 S. E. 802.
- See Trover.**
- Costs; recovery of no more than of damages; C. C. § 5984 applied in case of positive tort, not of mere negligence.** *Saunders*, 20 A. 292, 93 S. E. 103. **See Costs.**
- County's liability limited.** *Millwood*, 106/743, 32 S. E. 577.
- Not liable for injury to cattle by polluting water.** *Howard*, 127/291, 56 S. E. 418.
- Road work injuring adjacent land.** *Barfield*, 109/386, 34 S. E. 596.
- See Counties.**
- Corporate liability in.** *Hansford*, 10 A. 270, 73 S. E. 405. **See Corporations; Master and Servant; Railroads.**
- Covenant in deed, on breach of.** *Self*, 139/400, 77 S. E. 562.
- Running with land, when no recovery as on breach of.** *Allen*, 107/838, 33 S. E. 696; *Atlanta Con. St. Ry. Co.*, 108/634, 34 S. E. 184.
- See catchword "Contract," supra.**
- Credit, liability for injury to.** *State Mutual Life & Co. Asso.*, 116/855, 43 S. E. 262.
- Criminal prosecution, civil liability not affected by result of.** *Seaboard Air-Line Ry.*, 124/357, 52 S. E. 427, 2 L. R. A. (N. S.) 472; *Powell*, 125/823, 54 S. E. 732.
- Crops growing and immature, special tribunal for trial of trespass on, by animals at large.** *James*, 148/201, 96 S. E. 216.
- Loss of; allegations demurrable.** *Central Ga. Power Co.*, 141/173, 187, 191, 196, 198, 80 S. E. 636, 645, 647, 648.
- Prevention from completing; what recoverable.** *Sheppard*, 19 A. 677, 92 S. E. 39.
- Sufficient allegation as to damages.** *Parrish*, 21 A. 275, 279, 94 S. E. 315.
- Cross-actions arising from same affray.** *McNatt*, 117/898, 45 S. E. 248.
- Custom or practice, non-liability for injury on ceasing.** *W. & A. R. Co.*, 136/494, 71 S. E. 792; *Ethridge*, 136/677, 71 S. E. 1063; 38 L. R. A. (N. S.) 932, Ann. Cas. 1912D, 128.
- Dam.** **See catchwords "Nuisance," "Overflow," "Trespass," "Water," infra.**
- Damnum absque injuria.** **Abutting-property value lessened by lawful construction in highway.** *Darnall*, 134/656, 68 S. E. 584.
- Animal inherently vicious, injury to.** *Garner*, 7 A. 630, 67 S. E. 847.
- Deprivation by act of law.** *Lawrence*, 131/844, 63 S. E. 631, 19 L. R. A. (N. S.) 966, 15 Ann. Cas. 1097.
- Explosives lawfully stored near residence.** *Simpson*, 143/465, 85 S. E. 344, L. R. A. 1915E, 430.
- Facility for sale, lawfully withdrawn.** *Durden*, 2 A. 70, 58 S. E. 299.
- Fright of horse by passing train.** *Southern Ry. Co.*, 2 A. 162, 58 S. E. 374.
- Mistake after exercise of due care.** *Wolfe*, 2 A. 499, 58 S. E. 899.
- Nominal damages not avoided.** *Williams*, 4 A. 374, 61 S. E. 495.
- Railroad operation on street of town.** *DeLoach*, 137/633, 73 S. E. 1072.
- Receivership preventing performance.** *McElheney*, 12 A. 790, 78 S. E. 727.
- Street alteration lessened value of property not abutting.** *Ward*, 143/80, 84 S. E. 374.
- Water underground, interference with.** *Stoner*, 132/178, 63 S. E. 897.
- Date on which amount fixed, arising from public improvement.** *Nelson*, 138/256, 75 S. E. 245.
- Dead body disinterred, and gravestones removed; recovery.** *Jacobus*, 107/518, 33 S. E. 853, 73 Am. St. R. 141.
- Elements and measure of damages.** *McDonald*, 10 A. 845, 74 S. E. 573.
- Exemplary damages for injury to.** *L. & N. R. Co.*, 123/62, 51 S. E. 24.

3 Ann. C. 128. See catchwords "Burial," supra, and "Disinterment," infra.

Exposure by carrier. *L. & N. R. Co.*, 123/62, 51 S. E. 24, 3 Ann. Cas. 128.

Mutilation of body. *Rushing*, 4 A. 823, 62 S. E. 563.

Death of injured person, abating right of action; not action already begun.

Leathers, 17 A. 437, 87 S. E. 754.

See catchwords, "Homicide," "Life," infra.

Debtor aided to evade payment, no basis to recover. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

Deceit. Measure of recovery on misrepresenting nature of tenancy. *Bridges*, 6 A. 689, 65 S. E. 700.

Misrepresentations inducing purchase of corporate stock, nonsuit in action for, affirmed. *Dunaway*, 19 A. 267, 91 S. E. 345.

See catchword "Fraud," infra.

Declarations of plaintiff, admissibility of. *Ingram*, 108/194, 33 S. E. 961.

Dead with stipulation for, on abandonment of right of way; vendee's successor not liable. *Atlanta Con. St. Ry. Co.*, 108/634, 34 S. E. 184.

Default in pleading. Effect in suit for unliquidated damages. *Whittier Mills Co.*, 23 A. 329, 98 S. E. 236.

Right of defendant in, to contest amount, by cross-examination and offering evidence. *O'Connor*, 117/451, 43 S. E. 731. Judgment concludes,

as to amount. *Lenney*, 118/427, 45 S. E. 317; *Southern Bell Tel. Co.*, 118/507, 45 S. E. 319; *Southern Bell Tel. Co.*, 119/722, 47 S. E. 194.

Verdict on, not given, in case of negligence, without assessment of damages by the jury. *Midland Ry.*, 20 A. 237, 92 S. E. 972.

Definite, evidence required to be. Loss to purchaser of stock shares. *Brooks*, 130/213, 60 S. E. 456.

Loss of cotton by fire, evidence sufficient for finding of. *Moss*, 144/173, 86 S. E. 550.

Deformity, mental pain from, as an element of damages. *Social Circle Cotton Mill Co.*, 23 A. 605, 99 S. E. 238.

Delay by interposing affidavit of illegality, assessment for. *Jordan*, 5 A. 244, 62 S. E. 1024.

Claim interposed for, and withdrawn. *Shelnutt*, 141/678, 81 S. E. 1106. No damages, if part not subject to levy. *Burt*, 102/121, 29 S. E. 137. If no finding of value of property. *Adams*, 111/505, 36 S. E. 597. Recovery, how limited. *Rexford*, 131/678, 63 S. E. 337.

Deduction from contract price for. *Mayor & Co. of Washington*, 132/849, 65 S. E. 80.

Fault of defendant or of plaintiff, not shown by petition. *Breed*, 21 A. 677, 94 S. E. 907.

Frivolous appeal; no damages without money verdict. *Adams*, 111/505, 36 S. E. 597.

In carriage; what damages not recoverable. *Central of Ga. Ry. Co.*, 141/51, 80 S. E. 282, 49 L. R. A. (N. S.) 429, Ann. Cas. 1915A, 1076. See *Carriers; Railroads*.

Indefinite allegations of damages resulting from delay. *Harrell*, 14 A. 451, 81 S. E. 384.

In delivery of goods; measure; remedy; admissibility of evidence. *Southern Express Co.*, 134/446, 67 S. E. 944, 137 Am. St. R. 227.

In delivery; items not elements for recovery. *Oxford Mills*, 6 A. 644, 65 S. E. 791.

Interest ordinarily compensates for delay. *Ellis*, 120/890, 48 S. E. 352. See catchword "Interest," infra.

Measure of damages on loss of perishable freight by delay. *Lamb*, 15 A. 759, 84 S. E. 213.

Waiver of delay, how far effective. *Hardwood Lumber Co.*, 134/826, 68 S. E. 725, 32 L. R. A. (N. S.) 192.

Writ of error for delay; damages awarded. *Rogers*, 104/665, 30 S. E. 801; *Purity Ice Works*, 104/676, 30 S. E. 885; *Buchannon*, 105/840, 32 S. E. 121; *Bailey*, 107/364, 33 S. E. 434; *Tatum*, 108/336, 33 S. E. 940; (though not requested) *Collins*, 108/752, 32 S. E. 667; *Harrell*, 108/789, 33 S. E. 852; *Gentry*, 109/172, 34 S. E. 349;

Moxley, 109/182, 34 S. E. 310; Osborn & Wolcott Mfg. Co., 109/196, 34 S. E. 306; Atlanta Con. Bot. Co., 109/550, 35 S. E. 124; Southern Ry. Co., 110/779, 36 S. E. 232; Wright, 111/819, 35 S. E. 640; Farmers Supply Co., 111/825, 35 S. E. 675; North Rome, 111/833, 36 S. E. 219; Brooks, 111/835, 36 S. E. 99; Shields, 111/836, 36 S. E. 51; Gammage, 116/779, 43 S. E. 59; Kessler, 121/274, 48 S. E. 922; Bater, 2 A. 62, 58 S. E. 312; Dublin & Co. R. Co., 2 A. 749, 59 S. E. 10; National Loan Co., 3 A. 237, 59 S. E. 717; Wilcox, 3 A. 740, 60 S. E. 357; Moore, 4 A. 151, 60 S. E. 1035; Swindell, 4 A. 414, 61 S. E. 847; Jester, 4 A. 476, 61 S. E. 926; Smith, 6 A. 75, 64 S. E. 292; Pendley Brick Co., 6 A. 114, 64 S. E. 664; Pate-Smith Co., 6 A. 189, 64 S. E. 710; Central of Ga. Ry. Co., 6 A. 258, 64 S. E. 1128; Atlantic Coast Line R. Co., 2 A. 378, 65 S. E. 44; Joiner, 6 A. 564, 65 S. E. 299; Roe, 7 A. 142, 66 S. E. 482; Phillips Co., 7 A. 224, 66 S. E. 623; Miller, 7 A. 262, 66 S. E. 628; Nesmith, 7 A. 558, 67 S. E. 221; Tatum, 7 A. 795, 68 S. E. 307; Belcher, 8 A. 34, 68 S. E. 460; Morrow Co., 8 A. 409, 69 S. E. 317; Rogers, 9 A. 811, 72 S. E. 285; Washington County, 10 A. 322, 73 S. E. 351; Sartorius, 10 A. 522, 73 S. E. 854; Christie, 10 A. 529, 73 S. E. 751; Barwick, 10 A. 544, 73 S. E. 701; Campbell, 10 A. 839, 74 S. E. 443; Crowley, 11 A. 69, 74 S. E. 701; White, 12 A. 141, 76 S. E. 1040; Napier, 12 A. 153, 76 S. E. 1062; Smith, 12 A. 715, 78 S. E. 264; Long, 12 A. 779, 78 S. E. 471; Sirmans, 18 A. 586, 89 S. E. 1103; Dickey, 18 A. 629, 89 S. E. 1098; Hogg, 18 A. 649, 90 S. E. 226; McEachern, 18 A. 668, 90 S. E. 367.

Writ of error for delay. Damages not awarded in these cases. Street, 110/277, 34 S. E. 845; Horne, 110/372, 35 S. E. 715, 49 L. R. A. 176; Georgia Coast & Co. R. Co., 132/640, 64 S. E. 897; Jones, 5 A. 113, 62 S. E. 711; Garbutt Lumber Co., 134/382, 67 S. E. 1027; Coffee, 7 A. 429, 66 S. E. 1032; A., B. & A. R. Co. 7 A.

566, 67 S. E. 678; Scott, 8 A. 706, 70 S. E. 142; A. C. L. R. Co., 9 A. 344, 71 S. E. 683; Gelders, 9 A. 389, 71 S. E. 503; Phenix Ins. Co., 16 A. 261, 85 S. E. 206; Roberts, 16 A. 386, 85 S. E. 615.

Writ of error for delay. No award of damages, if no judgment for certain sum of money. Pittsburg-Bartow Co., 137/232, 73 S. E. 367; Furr, 139/815, 78 S. E. 181; Berryman, 145/136, 88 S. E. 682.

See Practice in Courts of Review.

Delays by providential causes and strikes, when no basis of relief under contract. Florida R. Co., 112/1, 37 S. E. 130. Cannon, 113/501, 38 S. E. 983.

Measure of damages for, under building contract. Cannon, 113/501, 38 S. E. 983.

See catchwords "Carrier," "Contract breach," *supra*; "Interest," "Liquidated," "Recoupment," *infra*; Carriers; Railroads; Telegraphs and Telephones.

Delivery of goods refused. See catchword "Sale," *infra*.

Demurrage as an element. Sims-McKenzie Co., 10 A. 743, 73 S. E. 1080. See Carriers; Shipping.

Demurrer, judgment on, concluded question. Georgia Northern Ry. Co., 119/504, 46 S. E. 659.

Special, to raise question of measure. Brown, 119/88, 91, 46 S. E. 71.

Depreciation in value of house and lot; evidence of rental value and cost of repair. Mayor & Co. of Macon, 113/1112, 39 S. E. 446; Swift, 115/885, 42 S. E. 277, 58 L. R. A. 390; Savannah & Co. Ry. Co., 117/893, 45 S. E. 280.

Value of other lots affected; not sale of one of them. City of Columbus, 117/823, 45 S. E. 59.

Deprivation of clothing by delay of carrier; measure of recovery. Ford, 8 A. 295, 68 S. E. 1072.

Destruction of injured property after tort, no cause to escape liability. City of Rome, 134/650, 68 S. E. 330.

Diminution of damages by possible earnings, no defense for breaking contract. Americus Grocery Co., 129/40, 58 S. E. 462.

By sum received from third person, when not allowed. **Nashville &c. Ry.**, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. C. 210.

Ry wages given without work while disabled, not allowed to wrong-doer. **W. & A. R. Co.**, 15 A. 370, 83 S. E. 445.

For contributing fault (comparative negligence) of plaintiff. **Southern Ry. Co.**, 104/243, 30 S. E. 818; 110/779, 36 S. E. 232; **Savannah Electric Co.**, 130/421, 60 S. E. 1056; **Alabama Great So. R. Co.**, 131/238, 62 S. E. 71; **Central of Ga. Ry. Co.**, 135/206, 69 S. E. 165, 31 L. R. A. (N. S.) 813, 21 Ann. Cas. 1077; **Central of Ga. Ry. Co.**, 137/107, 74 S. E. 839; **Central of Ga. Ry. Co.**, 140/335, 78 S. E. 1052; **Georgia R. &c. Co.**, 142/513, 83 S. E. 127; **W. & A. R. Co.**, 145/276, 88 S. E. 983; **L. & N. R. Co.**, 145/525, 89 S. E. 620; **Powell**, 145/697; 89 S. E. 573, L. R. A. 1917A, 306; (criticism of instruction to jury) **Alabama Great So. R. Co.**, 131/243, 62 S. E. 71; (inaccurate instruction) **Central of Ga. Ry. Co.**, 141/553, 81 S. E. 857; (instructions to jury, and omission thereof) **Seaboard Air-Line Ry.**, 18 A. 271, 89 S. E. 378; **Augusta-Aiken Ry. Co.**, 18 A. 303, 89 S. E. 444; **Lamb**, 18 A. 584, 90 S. E. 103; (issue not raised) **Deen**, 7 A. 509, 67 S. E. 212; (need of plea or request for charge) **L. & N. R. Co.**, 136/455, 71 S. E. 774; (non-application of rule in cases of personal injuries, on the facts) **Warfield**, 9 A. 322, 71 S. E. 703; **Cavanaugh**, 9 A. 466, 71 S. E. 779; **Moore**, 9 A. 496, 71 S. E. 808.

Not only authorized, but required, on failure to exercise due care. **Augusta-Aiken Ry. &c. Co.**, 18 A. 303, 89 S. E. 444.

Of consequential damages by benefits. **Nelson**, 138/253, 75 S. E. 245.

Street-grade changed; inadmissible evidence. **Estes**, 103/780, 30 S. E. 346.

See catchwords "Apportionment," supra; "Lessen," "Mitigation," infra.

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Direct and consequential. Fire loss from electric current. **City of Dublin**, 142/840, 83 S. E. 939.

Direction of judge as to reducing, when no cause for new trial. **Bank of Oglethorpe**, 15 A. 92, 82 S. E. 635.

Of verdict, erroneous. See catchwords "Discretionary," "Opinions," infra.

Disability total, no issue as to, for submission to jury. **Southern Marble Co.**, 144/260, 86 S. E. 1086.

Discharge of servant, wrongful; measure of recovery. **Realty Co.**, 4 A. 402, 61 S. E. 832. See catchwords "Contract breach," supra.

Of teacher, what damages recoverable. **Board of Education**, 22 A. 77, 78, 95 S. E. 753.

Discretionary, matters susceptible of proof are not; aliter as to pain, etc. **Linder**, 137/353, 73 S. E. 734.

No direction of verdict for. **Patterson**, 15 A. 680, 84 S. E. 163.

On personal injury; functions of jury and of judge. **Holland**, 3 A. 636, 60 S. E. 331.

Disfigurement of physical member as an element. **W. & A. R. Co.**, 15 A. 370, 83 S. E. 445.

Dog killed; proof of value. **Columbus R. Co.**, 128/631, 58 S. E. 152, 10 L. R. A. (N. S.) 1136, 119 Am. St. R. 404.

Domestic services of wife, as element of. **W. & A. R. Co.**, 22 A. 314, 96 S. E. 17. See catchwords "Married woman," infra.

Double recovery of substantially same item, not allowable. **Central Georgia Power Co.**, 141/187, 80 S. E. 645. See **Southern Ry. Co.**, 129/665, 59 S. E. 802; **Georgia Ry. & El. Co.**, 6 A. 645, 65 S. E. 785.

Expenses of effort, and value of property, not both recoverable. **Mitchell**, 3 A. 542, 60 S. E. 295; **Tygart**, 5 A. 412, 63 S. E. 521.

Drainage district, compensation for land taken or damaged by. **Almand**, 147/

532, 94 S. E. 1028; *Almand*, 21 A. 744, 95 S. E. 14.

Earning capacity decreased by advancing age. (Action for permanent injury) *Florida R. Co.*, 112/846, 38 S. E. 85; *Central of Ga. Ry. Co.*, 112/914, 38 S. E. 350; *Central of Ga. Ry. Co.*, 129/349, 58 S. E. 844; *Merchants &c. Trans. Co.*, 4 A. 655, 62 S. E. 130; (issue for submission to jury) *W. & A. R. Co.*, 144/250, 252, 86 S. E. 933.

Computation in reducing gross earning capacity to present worth. *A. & W. P. R. Co.*, 23 A. 353, 98 S. E. 248.

Decreased by loss of fingers. *O'Neill Mfg. Co.*, 110/577, 36 S. E. 59.

Decrease of, in future, as affecting measure of recovery. *Central Ry. Co.*, 21 A. 235, 94 S. E. 50; *W. & A. R. Co.*, 22 A. 315, 96 S. E. 17.

Evidence as basis of issue. *L. & N. R. Co.*, 142/275, 82 S. E. 659.

Evidence of actual earning, and of employment offered. *Holland*, 134/678, 68 S. E. 555, 19 Ann. Cas. 1032.

Evidence of capacity, by proof of actual earnings from farm. *Wrightsville &c. R. Co.*, 129/204, 58 S. E. 769.

Evidence of professional efficiency relevant. *Macon Ry. &c. Co.*, 123/773, 51 S. E. 569.

Future increase of capacity. *Central of Ga. Ry. Co.*, 143/754, 85 S. E. 220.

Illustrated by amount earned at time of injury. *W. & A. R. Co.*, 15 A. 370, 83 S. E. 445.

Insufficient allegation, that "plaintiff was . . . capable of earning \$5 as a carpenter," etc. *Swift Spinning Mills*, 23 A. 703, 99 S. E. 223.

Life-expectancy table not essential evidence. *Dalton Excelsior Co.*, 19 A. 336, 91 S. E. 440.

Loss of, not measured solely by net income from particular business. *Powell*, 145/697, 89 S. E. 573, L. R. A. 1917A, 306.

Minor plaintiff's capacity not shown; measure. *Atlanta &c. Ry. Co.*, 122/82, 49 S. E. 818.

Minor's capacity, testimony admissible to illustrate. *W. & A. R. Co.*, 139/493, 77 S. E. 576.

Permanent decrease; evidence admissible. *Atlanta &c. R. Co.*, 133/231, 65 S. E. 437.

Prospective; allegation not demurrable. *Central of Ga. Ry. Co.*, 121/462, 49 S. E. 278.

Prospects of increase or decrease considered. *Southern Bell Tel. Co.*, 12 A. 464, 77 S. E. 312.

Property taken; proof of its earning capacity. *Hayes*, 1 A. 26, 57 S. E. 1087.

Recovery for loss of. *Southern Ry. Co.*, 125/34, 125/354, 54 S. E. 113; *Southern Cotton Oil Co.*, 125/370, 54 S. E. 110; *Central Ry. Co.*, 145/656, 89 S. E. 760.

Recovery without proof of earnings. *City Council*, 111/465, 36 S. E. 830.

Relevant evidence, that plaintiff was a tramp. *Central of Ga. Ry. Co.*, 5 A. 562, 63 S. E. 642.

Rule as to total loss, not to be applied in case of partial diminution. *Macon D. & S. R. Co.*, 19 A. 370, 91 S. E. 492.

Totally destroyed; recovery. *Central of Ga. Ry. Co.*, 118/833, 45 S. E. 680.

Value of services in previous occupation; evidence. *Atlanta Con. St. Ry. Co.*, 103/333, 30 S. E. 41.

Earnings during life expectancy, not recoverable in addition to pecuniary loss. *Southern Ry. Co.*, 139/549, 77 S. E. 803.

Loss of, as element. Commissions of traveling salesman. *Southwestern R. Co.*, 14 A. 674, 82 S. E. 166.

Of child, considered in action for his homicide. *Atlantic Coast Line R. Co.*, 135/635, 70 S. E. 249. Right of recovery not in child, but in father. *Union Cotton Mills*, 144/716, 87 S. E. 1029.

Of decedent; extent of proof. *Central of Ga. Ry. Co.*, 112/923, 38 S. E. 365, 53 L. R. A. 210.

Of husband, not recovered by wife. *Glenn*, 1 A. 821, 58 S. E. 83.

Of married woman, husband's recovery for loss of. *Georgia R. &c. Co.*, 124/460, 52 S. E. 916, 4 Ann. C. 200; (rule and exceptions) *Wrightsville &c. R. Co.*, 9 A. 372, 71 S. E. 691.

Of married woman, recovery by her for loss of. *Burt*, 142/182, 82 S. E. 542.

Prospective, as an element. *City of Thomasville*, 17 A. 625, 87 S. E. 923.

Prospective; determination of amount. *Standard Oil Co.*, 15 A. 572, 84 S. E. 69.

Prospective; evidence required for submitting issue. *Southern Ry. Co.*, 128/244, 57 S. E. 504.

Prospective increase considered in suit by minor. *Betts Co.*, 139/199, 77 S. E. 77.

Prospective, loss of, by non-delivery of telegram. *Cheshire*, 16 A. 790, 86 S. E. 405.

Prospective, held too uncertain. *Anderson*, 22 A. 368, 95 S. E. 1012.

Prospects of, in future. *Central of Ga. Ry. Co.*, 135/846, 70 S. E. 321.

Prospects of increase, and probability of increased capacity, distinguished. *Central of Ga. Ry. Co.*, 2 A. 807, 59 S. E. 81.

Prospects of increase, considered. *Georgia Ry. &c. Co.*, 143/94, 84 S. E. 434; *Schaufele*, 6 A. 660, 65 S. E. 708.

Prospects of increase not considered without basis in evidence. *Georgia Cotton Oil Co.*, 112/620, 37 S. E. 873. *Ga. So. Ry. Co.*, 130/696, 61 S. E. 718.

Recovery for loss of, how limited. *Central of Ga. Ry. Co.*, 106/130, 32 S. E. 78.

Easement, for destroying or interfering with. *Austin*, 108/671, 703, 34 S. E. 852, 47 L. R. A. 755; *Brunswick &c. R. Co.*, 112/604, 37 S. E. 888, 52 L. R. A. 396; *Mayor &c. of Macon*, 113/90, 38 S. E. 392; *Bale*, 123/99, 50 S. E. 990; *Atlantic &c. Ry. Co.*, 125/329, 54 S. E. 148; *Cherokee Mills*, 138/856, 76 S. E. 373.

Light and air, measure for obstructing. *Darnell*, 129/62, 58 S. E. 631, 13 L. R. A. (N. S.) 333, 121 Am. St. R. 206.

Measure on condemning. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

Value of, on wrongful deprivation. *McDonald*, 10 A. 845, 74 S. E. 573.

Way destroyed or hindered; measure. *Atkinson*, 140/52, 78 S. E. 465; *Mayor &c. of Gainesville*, 12 A. 126, 76 S. E. 1034; *Central of Ga. Ry. Co.*, 12 A. 369, 77 S. E. 193. See catchword "Street," *infra*.

Egress and ingress, for interfering with right of. *Mallory*, 131/271, 62 S. E. 179; *Central Georgia Power Co.*, 141/186, 80 S. E. 642.

Ejectment; amount of mesne profit or rent, for jury. *Horkan*, 111/126, S. E. 432. See Ejectment.

Ejection from place of business; elements of damages. *May Bros. Inc.*, 23 A. 33, 97 S. E. 277.

Election against tort-feasors. *Mashburn*, 117/568(13), 581, 44 S. E. 97.

Between contract breach and tortious wound to feelings. *Harris*, 121/314, 48 S. E. 959.

Of elements for recovery, when required of plaintiff. *Mitchell*, 3 A. 542, 60 S. E. 295.

To sue in tort, as a bar to action for breach of implied contract. *Stokes*, 20 A. 325, 93 S. E. 27.

Electrical works, from injuries by. See *Telegraphs and Telephones*.

Elements several, cause of action single, if parties and subject be identical. *Seaboard Air-Line Ry.* 18 A. 341, 89 S. E. 438.

Eminent domain, from exercise of. See catchword "Condemnation," *supra*.

Railroad in street; tender of damages prerequisite to exercise. *Harrold*, 142/686, 83 S. E. 534.

Employer's liability act of Congress, measure under, for homicide. *Southern Ry. Co.*, 139/549, 77 S. E. 803. See *Master and Servant*.

Employing another's servant; recovery under act of 1901. *McBride*, 128/473, 57 S. E. 789.

Enhancement of value, benefit from, when not to be considered. *Pelham*

Phosphate Co., 21 A. 551, 94 S. E. 846.

Enlightened conscience of jury as measure. Assault and battery. **Beckworth**, 6 A. 859, 65 S. E. 1075.

Check dishonored. **Smith**, 8 A. 288, 68 S. E. 1092.

Instruction should specify matters referred to. **Ga. So. Ry. Co.**, 130/696, 61 S. E. 718.

Measure not applicable for expenses, lost time, lessened capacity to work, etc. **Macon Ry. & Co.**, 120/511, 48 S. E. 232; **Atlantic & Ry. Co.**, 125/460, 54 S. E. 105; **Southern Ry. Co.**, 128/814, 58 S. E. 470; (instructions not applicable) **Southern Ry. Co.**, 138/32, 74 S. E. 778; **Wadley**, 138/276, 75 S. E. 153; (not applicable to matter for proof) **Southern Ry. Co.**, 132/812, 65 S. E. 131; (restricted; other elements to be distinct) **Lawrenceville Oil Mill**, 143/259, 84 S. E. 584.

Minor's earning capacity not appearing. **Atlantic & Ry. Co.**, 122/82, 49 S. E. 818.

Pain and diminished capacity to work. **City of Atlanta**, 139/393, 77 S. E. 393; **L. & N. R. Co.**, 142/721, 771, 83 S. E. 720, 770; (pain in future) **Southern Ry. Co.**, 6 A. 184, 64 S. E. 703; **Atkinson**, 13 A. 100, 78 S. E. 830; **City of Rome**, 13 A. 386, 79 S. E. 243; **Lamb**, 15 A. 533, 83 S. E. 796; **Mayor & Co. of Americus**, 15 A. 805, 84 S. E. 144. See catchword "Pain," *infra*.

Passenger carried beyond destination; measure, and application of C. C. § 4504. **W. & A. R. Co.**, 20 A. 249, 92 S. E. 1006.

Equitable action; recovery of damages under prayer for general relief, without suing on bond. **Armour**, 144/295, 87 S. E. 18.

Relief, where damages incapable of ready computation. **Anthony Shoals Co.**, 138/460, 75 S. E. 606. See **Equity**.

Errors as to elements for which no allowance made, no cause of exception. **Field**, 142/424, 83 S. E. 93.

Harmless by amount of verdict. **Atlantic Coast Line R. Co.**, 5 A. 780, 63 S. E. 1126.

In admitting improper element, corrected by instruction of legal measure. **Toole Fur. Co.**, 5 A. 271, 63 S. E. 55.

In admitting testimony, no cause for setting aside very moderate recovery. **Central of Ga. Ry. Co.**, 118/142, 44 S. E. 975.

Estate in remainder contingent on person, when no basis to recover. **Town of Decatur**, 144/728, 87 S. E. 1036.

Estimate. Conclusion of witness not received. **Georgia R. & Co.**, 129/502, 59 S. E. 217; **Neal**, 131/702, 63 S. E. 221.

General estimate of injury to live stock in shipment, not competent. **Georgia, Fla. & Ry. Co.**, 143/312, 85 S. E. 197.

Of value of damaged property, though uncontradicted, need not be accepted by jury as correct. **Georgia & Northern Ry. Co.**, 22 A. 665, 97 S. E. 94.

Estoppel of claim by injured party who prevented performance. **Stimpson Scale Co.**, 4 A. 568, 61 S. E. 1131.

Eviction of tenant holding over; measure of damages. **Jones**, 146/238, 91 S. E. 45.

Facts authorizing recovery of nominal damages only. \$400 held excessive. **Copeland**, 21 A. 485, 94 S. E. 633.

Wrongful eviction, recovery for. **Harris**, 121/314, 48 S. E. 959.

See catchword "Landlord," *infra*.

Evidence. Admissible and relevant matters for estimating. **Southern Railway Co.**, 131/21, 61 S. E. 913; **Mallory**, 131/271, 62 S. E. 179; **Neal** 131/701, 63 S. E. 221; **L. & N. R. Co.**, 131/792, 63 S. E. 501.

Cost of filling lot to street grade. **Mayor & Co. of Macon**, 2 A. 359, 58 S. E. 540.

Exhibition of person to jury. **Southern Ry. Co.**, 132/859, 64 S. E. 1083.

Irrelevant, in suit for injury to the plaintiff, that he has wife and child. **Macon, Dublin & Co. R. Co.**, 145/647, 89 S. E. 767.

Items, amounts, and total may be stated by witness. *Neal*, 131/702, 63 S. E. 221.

Payments by defendant for plaintiff, not to be proved without pleading. *Holland*, 134/679, 68 S. E. 555.

Refusal of plaintiff to submit to physical examination. *City of Cedar-town*, 2 A. 583, 59 S. E. 836.

Relevant: that injured servant had sought but failed to obtain employment. *Macon Dublin &c. R. Co.*, 145/647, 89 S. E. 767.

Schedule of wages, and time-table. *Atlantic Coast Line R. Co.*, 132/189, 63 S. E. 834.

Statements of former customers, not admissible. *Price*, 132/246, 64 S. E. 87.

Examination of party's person to ascertain extent of injury, power and discretion of court to require. *Macon Ry. &c. Co.*, 120/511, 48 S. E. 232; *Macon &c. R. Co.*, 133/83, 65 S. E. 146; *City of Cedartown*, 2 A. 583, 59 S. E. 836; *Temple*, 19 A. 307, 91 S. E. 502.

Excavation of roadway; non-liability for injury to abutting property. *Darnall*, 134/656, 68 S. E. 584.

Excess in finding, how dealt with, in different cases. *Seaboard Air-Line Ry.*, 132/71, 76, 63 S. E. 1103.

Excessive awards. Condemnation of way for telegraph line, \$250. *Postal Tel. Co.*, 124/746, 52 S. E. 803, 3 L. R. A. (N. S.) 333.

For more than sum specified. *Rexford*, 131/678, 63 S. E. 337.

Homicide of locomotive fireman, \$12000. *Georgia R. &c. Co.*, 110/189, 35 S. E. 322.

\$500 for ejection from car. *Savannah Electric Co.*, 6 A. 371, 65 S. E. 50.

\$1000 for language and manner of conductor to woman. *Georgia So. &c. Ry. Co.*, 8 A. 277, 68 S. E. 943 (s. c. 10 A. 558, 73 S. E. 858, \$700 allowed to stand).

\$2500 for false arrest (semble). *Piedmont Hotel Co.*, 9 A. 686, 72 S. E. 51.

\$200 for discharge of passenger at wrong place. *Southern Ry. Co.*, 10 A. 526, 73 S. E. 703.

\$400 for result of misdirection to male passenger. *A. C. L. R. Co.*, 11 A. 520, 75 S. E. 841.

\$550 for assault. *Copeland*, 18 A. 198, 89 S. E. 188.

Nuisance by noxious gases and offensive odors, \$1000. *Swift*, 115/885, 42 S. E. 277, 58 L. R. A. 390.

Passenger carried past station (\$250). *Southern Ry. Co.*, 105/316, 31 S. E. 182; (\$1000) *Dorsey*, 113/565, 38 S. E. 958; (\$249.50) *Central of Ga. Ry. Co.*, 118/172, 44 S. E. 1001; see *Southern Ry. Co.*, 118/227, 45 S. E. 23.

Passenger expelled from train (\$500). *Southern Ry. Co.*, 108/591, 34 S. E. 283; (\$1250) *Georgia R. Co.*, 115/1013, 42 S. E. 364.

Caution to be exercised in so declaring. *Holland*, 3 A. 637, 60 S. E. 331.

Judge's duty to set aside verdict. *Savannah Electric Co.*, 6 A. 376, 65 S. E. 50.

New trial, first grant of, not reversed. *Smith*, 135/151, 68 S. E. 1031.

New trial, first grant of, not reversed; though amount discretionary, and no prejudice appear. *Smith*, 8 A. 288, 68 S. E. 1092.

Excessive, amounts of findings not so held. Shot in leg, pain, etc., \$3000. *Brunswick &c. R. Co.*, 101/684, 28 S. E. 1000. Blow on head, \$5000. *Savannah &c. Co.*, 104/615, 30 S. E. 770. Aggravated tort, loss of arm etc., \$10,000. *Savannah &c. Ry. Co.*, 104/655, 30 S. E. 378, 69 Am. St. R. 187. Permanent injury from electric current, \$5000. *Brush Electric Co.*, 107/72, 32 S. E. 902. Woman thrown from buggy, \$500. *Atlanta &c. Ry. Co.*, 108/549, 34 S. E. 322. Face cut by wire, \$300. *City Council*, 113/153, 38 S. E. 389. Homicide by street-car. \$4000. *Atlanta Ry. Co.*, 112/725, 38 S. E. 107. Homicide of locomotive driver, \$5500. *Western & Atlantic R. Co.*,

113/776, 39 S. E. 447. Permanent injury by fall from car, \$10,000. **Macon Con. St. R. Co.**, 113/213, 38 S. E. 756. Injuries to locomotive fireman, \$7000. **Central of Ga. Ry. Co.**, 113/1045, 39 S. E. 441. Passenger expelled from train, \$450. **Southern Ry. Co.**, 114/141, 39 S. E. 894, 55 L. R. A. 536. Leg amputated, \$7000. **Seaboard Air-Line Ry.**, 117/99, 43 S. E. 494. Fall from car, \$750. **Savannah &c. Ry.**, 117/461, 43 S. E. 701. Assault and battery, \$1000. **Rounsaville**, 19 A. 336, 91 S. E. 446. Assault and battery, \$850. **Dannenberg**, 118/885, 45 S. E. 682. Injuries to locomotive driver, \$10,000. **Central of Ga. Ry. Co.**, 118/833, 45 S. E. 680. Boy's foot lost, \$5000. **Eagle &c. Mills**, 119/389, 46 S. E. 405. Injury to woman by 33-inch jump, \$5500. **Atlantic &c. R. Co.**, 119/658, 46 S. E. 867. Pain and permanent injury, \$5000. **Portner Brewing Co.**, 120/20, 47 S. E. 631. Pain and loss of time, \$4000. **Nashville &c. Ry.**, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. Cas. 210. Dog-bites, \$400. **Friedman**, 124/532, 52 S. E. 892. Homicide of woman of 34 years; dependent parent's recovery of \$6141.96. **Savannah El. Co.**, 124/663, 53 S. E. 109. Loss of eye, and pain, \$5000. **Georgia &c. Ry. Co.**, 122/680, 51 S. E. 15. Injuries to woman in collision of car and wagon, \$1000. **Macon Ry. &c. Co.**, 123/279, 51 S. E. 342. \$15,000, permanent injuries; paralysis and insanity. **Central of Ga. Ry. Co.**, 124/836, 53 S. E. 391. Boy's foot crushed and amputated, \$7500. **Southern Ry. Co.**, 126/657, 55 S. E. 1039. Knee dislocated, \$1200. **Alabama R. Co.**, 127/89, 55 S. E. 1046. Legs lost, \$7500. **Macon &c. Ry. Co.**, 127/472, 56 S. E. 616. Loss of leg, etc., \$15,000. **Central of Ga. Ry. Co.**, 128/547, 58 S. E. 44. Injury to locomotive fireman, \$10,000. **Central of Ga. Ry. Co.**, 131/166, 62 S. E. 164. Injury to car-repairer, \$5000. **Seaboard Air-Line Ry.**, 131/799, 63 S. E. 344. Boy's legs amputated, \$20,000. **Southern Ry. Co.**, 132/858,

64 S. E. 1083. Omission to stop train, \$250. **So. Ry. Co.**, 133/553, 66 S. E. 370, 30 L. R. A. (N. S.) 401, 18 Ann. Cas. 67. Crippled for life, \$10,000. **Hilton & Dodge Lumber Co.**, 135/696, 70 S. E. 234. \$1500, injury to passenger. **Wadley So. Ry. Co.**, 136/440, 71 S. E. 740. \$9826 for homicide by train. **Seaboard Air-Line Ry.**, 136/505, 71 S. E. 887. \$8000 for permanent injury to boy. **Betts Co.**, 139/198, 77 S. E. 77. \$1010 for carrier's tortious retaking after delivery of car of coal. **L. & N. R. Co.**, 139/456, 77 S. E. 638. \$650 for broken ribs, pain, etc. **Seaboard Air-Line Ry.**, 140/254, 78 S. E. 925, Ann. Cas. 1914D, 165. \$10,000, homicide of flagman. **Ga. Fla. & Ala. Ry. Co.**, 4 A. 277, 61 S. E. 505. \$5,000, woman thrown from car-step. **Macon Ry. &c. Co.**, 4 A. 313, 61 S. E. 290. \$12,250, loss of leg, etc. **Merchants &c. Trans. Co.**, 4 A. 655, 2 S. E. 130. \$25,000, loss of both legs. **Seaboard Air-Line Ry.**, 5 A. 402, 63 S. E. 299. \$3500, retroversion of womb by fall. **Southern Ry. Co.**, 6 A. 172, 64 S. E. 703. \$2500, homicide of minor son. **Western Union Tel. Co.**, 6 A. 260, 64 S. E. 1123. \$4500, injuries to railroad employee in collision. **W. & A. R. Co.**, 6 A. 386, 65 S. E. 48. \$250 for not transmitting telegram. **Western Union Tel. Co.**, 8 A. 168, 68 S. E. 881. \$150 for refusal to furnish ticket, causing delay. **Southern Ry. Co.**, 8 A. 654, 70 S. E. 69. \$28,000, loss of legs. **A. C. L. R. Co.**, 9 A. 13, 25, 70 S. E. 214. \$500, fall in street. **City of Rome**, 9 A. 62, 70 S. E. 594. \$15,000, car-repairer maimed. **Wrightsville &c. R. Co.**, 9 A. 155, 70 S. E. 955. \$15,000, homicide of railroad yardmaster. **S. A. L. Ry.**, 10 A. 273, 73 S. E. 588. \$1500, injury from heavy barrel pushed on person. **Charleston &c. Ry. Co.**, 10 A. 329, 73 S. E. 542. \$7000, permanent and serious injuries. **Central of Ga. Ry. Co.**, 10 A. 483, 73 S. E. 702. \$700 for affront to woman.

Georgia So. &c. Ry. Co., 10 A. 558, 73 S. E. 858. \$150 or \$500, for results of misdirection to female passengers. **Atkinson**, 11 A. 463, 75 S. E. 676; **Southern Ry. Co.**, 11 A. 609, 75 S. E. 925. \$750 for libel. **News Pub. Co.**, 11 A. 453, 75 S. E. 671. \$750, person thrown from buggy. **Muscogee County**, 11 A. 404, 75 S. E. 447. \$8500 and \$3500, injuries from electric shocks. **Southern Bell Tel. Co.**, 12 A. 28, 463, 76 S. E. 786, 77 S. E. 312. \$1500, stagnant pond producing sickness. **City of Rome**, 12 A. 756, 78 S. E. 475. \$1150, woman injured by fall on sidewalk. **Mayor &c. of Savannah**, 13 A. 61, 78 S. E. 779. \$5500, injuries to hip, etc. **Central of Ga. Ry. Co.**, 14 A. 273, 80 S. E. 688. \$7500, homicide. **W. & A. R. Co.**, 14 A. 388, 80 S. E. 916. \$2250, injury by fall. **Atkinson**, 14 A. 588, 81 S. E. 799. \$6000, injury to spine. **Southwestern R. Co.**, 14 A. 689, 82 S. E. 166. \$1000, injury by fall. **Mayor &c. of Macon**, 14 A. 703, 82 S. E. 162. \$8750, pain from injuries in train collision. **Central of Ga. Ry. Co.**, 15 A. 16, 82 S. E. 600. \$1250, and \$3500, injuries from falls. **Lamb**, 15 A. 533, 83 S. E. 796; **Mayor &c. of Americus**, 15 A. 805, 84 S. E. 144. \$500, assault and words. **Seaboard Air-Line Ry.**, 17 A. 489, 87 S. E. 714. \$15,000, homicide. **City of Thomasville**, 17 A. 627, 87 S. E. 923. \$3000, homicide of boy of six years. **Savannah El. Co.**, 18 A. 314, 89 S. E. 373. \$15,084, homicide of railroad servant. **Central of Ga. Ry. Co.**, 18 A. 362, 89 S. E. 433. \$2000, loss of eye. **Ware**, 18 A. 673, 90 S. E. 364. \$2000, \$2500, \$6500, injuries on railroad track. **Seaboard Air-Line Ry.**, 18 A. 261, 271, 89 S. E. 378, 383. \$11,600, personal injuries by railroad engine. **Seaboard Air-Line Ry.**, 18 A. 266, 89 S. E. 384. \$9500, personal injuries to car-inspector. **Seaboard Air-Line Ry.**, 18 A. 396, 89 S. E. 493. \$3500, injuries to trespasser on train. **Ga. So. &c. Ry. Co.**, 18 A. 511, 90 S. E. 80. \$10,000, fire-

man's loss of leg. **L. & N. R. Co.**, 713, 93 S. E. 228. \$10,000, homicide of wife and mother. **Lamb**, 20 A. 254, 92 S. E. 1010.

Amounts not held excessive, no bias, prejudice, or corrupt motive appearing. **Pratt Eng. Co.**, 142/401, 83 S. E. 107; **Murphy**, 1 A. 155, 57 S. E. 1046; **Seaboard Air-Line Ry.**, 5 A. 402, 63 S. E. 299; **Southern Ry. Co.**, 6 A. 172, 64 S. E. 703; **Savannah El. Co.**, 6 A. 371, 65 S. E. 50; **Atkinson**, 13 A. 100, 78 S. E. 830.

Not so held, though large. **Southern Ry. Co.**, 3 A. 411, 59 S. E. 1115. Though large to point of generosity. **Macon Ry. &c. Co.**, 4 A. 317, 61 S. E. 290. Though up to limit. **High Shoals Mfg. Co.**, 136/22, 70 S. E. 641.

Verdict for less than some of the estimates. **City of Atlanta**, 142/325, 82 S. E. 899.

Within range of estimates of land value. **Savannah &c. Ry. Co.**, 133/679, 66 S. E. 942.

See catchwords "Amount," supra; "Writing off," infra; Verdicts.

Ex delicto and ex contractu, not to be joined. Effect of claim of damages from breach of contract in action of tort. **Herring**, 141/825, 82 S. E. 132.

Action ambiguous; allegations, how construed. **Payton**, 4 A. 762, 62 S. E. 469; **Benjamin-Ozburn Co.**, 13 A. 636, 79 S. E. 753.

Action not ex contractu. **King**, 128/285, 57 S. E. 507; **Rushin**, 128/726, 58 S. E. 357.

Action treated here as for breach of public duty. **Smith &c. Lumber Co.**, 4 A. 715, 62 S. E. 472.

Action upheld as one for damages. **Wright**, 7 A. 542, 67 S. E. 272.

Damages ex delicto not recovered on mere breach of contract. **Milledgeville Water Co.**, 129/111, 58 S. E. 643; **L. & N. R. Co.**, 129/234, 58 S. E. 706.

Form of action, as to remote damages. **Chappell**, 8 A. 792, 70 S. E. 208. **Executor's liability to grantee in undelivered deed from testator, for fraud and misuse of power.** **Harris**, 144/520, 87 S. E. 661.

Exemplary damages, for injury to dead body. *L. & N. R. Co.*, 123/67, 51 S. E. 24, 3, Ann. Cas. 128. Interfering with burial. *Wright*, 112/884, 38 S. E. 94, 52 L. R. A. 621. Unlawful violation of graves. *Jacobus*, 107/518, 33 S. E. 853, 73 Am. St. R. 141.

Error in allowing double finding for same element. *Southern Ry. Co.*, 129/665, 59 S. E. 802.

Facts not authorizing recovery. *Cole*, 23 A. 479, 98 S. E. 407.

Malice and want of probable cause, as affecting recovery. *Speth*, 6 A. 630, 65 S. E. 580.

Not given, without circumstances of aggravation. *Haber & Co.*, 118/874, 45 S. E. 696.

Not given on breach on contract. *Hadden*, 135/372, 69 S. E. 480.

Wilful misconduct, or want of care, indicating conscious indifference to consequences, as basis to recover. *Southern Ry. Co.*, 129/665, 59 S. E. 802; contrast *Southern Ry. Co.*, 132/812, 65 S. E. 131.

See catchword "Punitive," *infra*.

Expectancy of life of plaintiff suing for loss of his child's services, consideration of: query. *Central of Ga. Ry. Co.*, 143/754, 85 S. E. 920.

See catchword "Tables," *infra*.

Expected loss on pending demands, not recoverable. *Bass*, 127/424, 56 S. E. 465, 12 L. R. A. (N. S.) 489.

Expenses and price of animals worthless from disease; recovery. *Snowden*, 105/385, 31 S. E. 110.

As part of recovery on breach of contract. *Macon Fair Asso.*, 16 A. 534, 85 S. E. 673.

Not recovered, if resale made. *Steinhauer*, 16 A. 470, 85 S. E. 677.

Feeding animals in pledge, liability for. *Collins*, 121/785, 49 S. E. 771.

Feeding and care of injured animal, recovery for. *Cook*, 22 A. 48, 95 S. E. 376.

Funeral expenses; detailed statement required on demurrer. *James*, 138/415, 75 S. E. 431, 41 L. R. A. (N. S.) 795, Ann. Cas. 1913D, 468.

Husband's right to recover, on tort to wife. *Burt*, 142/182, 82 S. E. 542.

In addition to profits, not allowed. *Anderson*, 121/688, 49 S. E. 725.

In complying with contract, recovery on breach. *Freeman*, 22 A. 200, 95 S. E. 737.

Items required in pleading. *Griffin Mfg. Co.*, 17 A. 532, 87 S. E. 816.

Live stock, of caring for; what recoverable. Labor organization, no recovery for keeping. *Sandlin*, 142/131, 82 S. E. 440.

Not proved by mere estimate of witness. *Georgia R. & Co.*, 129/502, 59 S. E. 217.

Of guarding against injuries; no recovery. *Allen* 107/838, 33 S. E. 696.

Of inducing order, no part of recovery for refusal to accept goods. *Florence Wagon Works*, 8 A. 197, 68 S. E. 866.

Of investigating title, and of survey of land, as elements for recovery. *O'Neal*, 9 A. 180, 70 S. E. 971.

Of litigation, bad faith of defendant as cause for allowing. *W. & A. R. Co.*, 15 A. 289, 82 S. E. 906; *Patterson*, 15 A. 680, 84 S. E. 163.

Of litigation, not allowed, if no bad faith before suit. *Traders Ins. Co.*, 118/381, 45 S. E. 426; *Georgia R. & Co.*, 118/723, 45 S. E. 600.

Of litigation, not ordinarily recoverable on breach of contract. *Lovell*, 145/106, 88 S. E. 569.

Of litigation; recovery not authorized. *Hansen*, 132/649, 64 S. E. 800. See catchwords "Attorney's fees," *supra*.

Of medical attention, etc. (Allegation demurrable) *L. & N. R. Co.*, 135/522, 69 S. E. 870; (allegation not demurrable for want of items) *Central Ga. Power Co.*, 141/174, 80 S. E. 636; (recovery without added proof of reasonableness) *Georgia Ry. & Co.*, 138/598, 75 S. E. 664.

Of necessary help; evidence. *Macon Con. St. R. Co.*, 113/216, 38 S. E. 756.

Of person and household, irrelevant on issue of business income. *Lenney*, 118/427, 45 S. E. 317.

Of preserving property to avoid further injury, recoverable. *Mayor &c. of Macon*, 108/323, 34 S. E. 152.

Of tracing lost goods, as an element. *Carr*, 12 A. 830, 79 S. E. 41.

Of travel, when not recovered. *Traders Ins. Co.*, 118/381, 387, 45 S. E. 426; *Lampkin*, 122/407, 50 S. E. 171; (allegation demurrable) *Malone &c. Co.*, 6 A. 114, 64 S. E. 666.

Paid, not recovered without proof of value. *Southern Ry. Co.*, 128/814, 58 S. E. 470.

Pleading too indefinite. See catchwords "Funeral," "Items," supra; "Specific," infra.

Reasonably incurred as result of injury, recoverable. *Savannah Electric Co.*, 130/421, 60 S. E. 1056.

Referring to exemplary damages as expenses, when immaterial. *Jacobus*, 107/523, 33 S. E. 855, 73 Am. St. R. 141.

Resulting from breach of contract, not recoverable under the facts. *Williams Mfg. Co.*, 21 A. 23, 93 S. E. 527.

Slander, consequential on injury by, held not recoverable. *Sammons*, 20 A. 241, 92 S. E. 950.

Specific allegation required. *Brown*, 132/712, 64 S. E. 1092, 131 Am. St. R. 229.

Experiment or test, evidence of, to ascertain extent of damage. *Carolina Cement Co.*, 9 A. 556, 71 S. E. 942.

Explosion, recovery for. See Negligence. Expulsion of passenger. See catchword "Passenger," infra.

Extraordinary or abnormal incident not considered in estimate. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

Extraordinary motion for new trial, to reduce amount found, not granted. *Seaboard Air-Line Ry.*, 6 A. 18, 63 S. E. 1130.

False entry of service, liability for taking benefit of. *Georgia &c. Ry. Co.*, 122/683, 51 S. E. 15.

Father's right to recovery for homicide of child, limited to loss of services. *Frazier*, 101/76, 28 S. E. 684. See catchword "Parent," infra.

Feelings hurt. Affront by conductor's speech to woman. *Georgia So. &c. Ry. Co.*, 10 A. 558, 73 S. E. 858.

By insult; causes of action. *Cole*, 102/474, 31 S. E. 107.

By interference with burial. *Wright*, 112/884, 38 S. E. 94, 52 L. R. A. 621.

Code section not applied unless injury be entirely to peace, happiness, and feelings. *Central of Ga. Ry. Co.*, 116/780, 43 S. E. 67.

Compensatory, not punitive damages. *Morris*, 126/470, 54 S. E. 1045, 115 Am. St. R. 105.

Demand wrongful, by conductor of passenger. *L. & N. R. Co.*, 11 A. 236, 75 S. E. 13.

Double recovery not allowable. *Southern Ry. Co.*, 129/665, 59 S. E. 802.

Humiliation and mortification from insulting language. *Georgia So. &c. Ry. Co.*, 8 A. 277, 68 S. E. 943.

Inapt instruction in case of personal injury. *Southern Ry. Co.*, 132/813, 65 S. E. 131.

No additional damages without physical trespass. *Southern Ry. Co.*, 101/263, 28 S. E. 847; 105/316, 31 S. E. 182.

Passenger carried beyond destination. *W. & A. R. Co.*, 20 A. 250, 92 S. E. 1006.

Passenger's ejection. *Georgia Ry. &c. Co.*, 6 A. 645, 65 S. E. 785.

Recovery without physical injury. *Mabry*, 116/624, 42 S. E. 1025, 59 L. R. A. 590, 94 Am. St. R. 141.

Right to recover for. (Abuse of process) *Morris*, 2 A. 61, 58 S. E. 316; (abusive and profane expulsion of person) *Dunn*, 2 A. 845, 59 S. E. 189.

See catchwords "Election," supra; "Mental," infra.

Fertilizer factory polluting stream of water, damages from. *Pelham Phosphate Co.*, 21 A. 547, 94 S. E. 846. See catchword "Nuisance," infra.

Fire loss; allegations of elements not proper for recovery. *Southern Ry. Co.*, 110/793, 36 S. E. 78.

- Appraisement of loss. **Eberhardt**, 14 A. 340, 80 S. E. 856. See **Insurance**; **Railroads**, catchword "Fire."
- Estimate of value of property burned. **Flint River &c. R. Co.**, 10 A. 578, 73 S. E. 957.
- Fence and trees burned; measure of damages. **L. & N. R. Co.**, 124/250, 52 S. E. 166.
- Landlord held not liable for result of fire set by cropper, which extended to the other land. **Cook**, 23 A. 284, 98 S. E. 92.
- Measure of value of land. **Southern Ry. Co.**, 128/438, 57 S. E. 694.
- Sparks thrown by engine; recovery for loss. **Atlantic &c. Ry. Co.**, 134/673, 68 S. E. 593. See **Municipal Corporations**; **Railroads**.
- Flood resulting from trespass; limitation of action. **Godfrey**, 21 A. 384, 94 S. E. 604; **Smith**, 22 A. 572, 96 S. E. 570.
- Sufficient allegation of damages. **Parrish**, 21 A. 275, 279, 94 S. E. 315. See catchwords "Overflow," "Trespass," "Water," *infra*.
- Forcible entry and homicide of servant, as basis of recovery. **Clark**, 112/777, 38 S. E. 81.
- Forfeiture contractual, when not allowed. **Lytle**, 122/459, 50 S. E. 402.
- For delay, when not treated as penalty. **Florida R. Co.**, 112/1, 37 S. E. 130. **Aliter**, **Foote & Davies Co.**, 115/985, 42 S. E. 413.
- Of right to recover for injury from violence invited by plaintiff. **City Electric Ry. Co.**, 101/33, 28 S. E. 508. See catchword "Liquidated," *infra*.
- Former recovery as a bar. **Clark**, 104/184, 30 S. E. 741.
- No bar to recovery for nuisance. **Mulligan**, 115/337, 41 S. E. 604.
- Fraud. Acreage of land misrepresented; recovery. **Golden**, 138/379, 75 S. E. 424.
- Action barred by limitation. **Small**, 102/248, 29 S. E. 430.
- Allegations not showing damage from misrepresenting value. **Swift**, 132/469, 64 S. E. 559.
- Cause to release from liability, not shown. **Southern Ex. Co.**, 134/445, 67 S. E. 944, 137 Am. St. R. 227.
- Conspiracy to suppress bidding at auction sale of land; measure of damages. **Allen**, 146/244, 91 S. E. 70.
- Conveyance, fraud in, gave no right of action in tort. **Graves**, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.
- Cross-demand from, in suit on contract. **Christian**, 114/360, 40 S. E. 296.
- Deceitful representation in sale; recovery. **Walters**, 105/586, 32 S. E. 609; **Bacon**, 117/207, 43 S. E. 482. Measure. **McCrary**, 119/876, 47 S. E. 341; **Pritchard**, 122/606, 50 S. E. 366.
- Divorce alleged to have been obtained on false ground; laches barred recovery of damages. **Conklin**, 148/640, 98 S. E. 221.
- Land boundary misrepresented; measure of recovery for shortage. **Doss**, 139/562, 77 S. E. 793.
- Life-insurance beneficiary change induced by, as ground of liability. **Mitchell**, 143/827, 85 S. E. 1050, Ann. Cas. 1917A, 469.
- Limitation of action for damages resulting from. **Frost**, 144/26, 85 S. E. 1028; **Harris**, 144/519, 87 S. E. 661.
- No relief from liability for, by absence of loss or damage. **Tune**, 131/528, 62 S. E. 976.
- Obtaining negotiable note (cause of action) **Jones**, 107/318, 33 S. E. 51, 45 L. R. A. 105; (recovery by maker against payee) **Kitchens**, 8 A. 587, 69 S. E. 1086; see **Tygart**, 8 A. 20, 68 S. E. 488.
- Pleading must allege facts amounting to. **Tolbert**, 101/741, 28 S. E. 991.
- Representation inducing purchase; evidence not supporting action. **Dumas**, 143/212, 84 S. E. 538.
- Representation without knowing falsity. **Walters**, 105/586, 32 S. E. 609.
- Stock purchase induced by; cause of action. **Howard**, 143/550, 85 S. E. 757; **Peacock**, 20 A. 540, 93 S. E. 171.
- Waiver of damages resulting from, by paying and receiving with knowl-

edge. *Tuttle*, 134/325, 67 S. E. 806, 20 Ann. Cas. 168.

See catchword "Release," *infra*.

Fright alone, no ground to recover. *Williamson*, 127/126, 56 S. E. 119.

Resulting in physical injury, as an element. *Goddard*, 14 A. 722, 82 S. E. 304.

Fruit deterioration from omission to furnish car for shipping, admissible testimony. *Armour*, 110/403, 35 S. E. 787.

Measure of damages. *Chattanooga So. R. Co.*, 133/127, 65 S. E. 285. See *Carriers*; *Railroads*.

Future damages. See catchwords "Pain," "Profits," *infra*.

General, comprehend pain and loss of time. *County of Bibb*, 110/341, 35 S. E. 656.

Evidence not admissible under general allegation. *Cross*, 123/817, 51 S. E. 704.

Include punitive damages. *A. C. L. R. Co.*, 14 A. 620, 82 S. E. 699.

Not recoverable under allegations here. *Wright*, 128/432, 57 S. E. 684; *Adams*, 18 A. 367, 89 S. E. 441; *Prince*, 23 A. 660, 99 S. E. 132.

Not recoverable where only special damages sued for. *Christophulos Co.*, 4 A. 819, 62 S. E. 562; *Red Cypress Co.*, 5 A. 202, 62 S. E. 1056; *Sparks Co.*, 9 A. 728, 72 S. E. 179.

Recoverable, though special damages not proved. *Flanders*, 124/714, 52 S. E. 687.

Recovery without proof of amount. *Batson*, 7 A. 837, 68 S. E. 455.

When recoverable without proof of special damages, in libel. *Weatherholt*, 132/41, 84 S. E. 119.

See catchword "Nominal," *infra*.

General relief, recovery of damages on prayer for. *Armour*, 144/295, 87 S. E. 18; *contra*, *Pound*, 146/435, 91 S. E. 405; *Rosenkrantz*, 147/732, 95 S. E. 225.

Good faith, evidence of, as mitigation. *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103.

Good will and profits of business, as elements. *Bass*, 110/698, 36 S. E. 44.

Governmental agency, corporation created as, not liable for injury resulting from negligence. *Almand*, 147/533, 94 S. E. 1028. See *Municipal Corporations*; *Negligence*, catchword "Governmental."

Health condition, as affecting recovery. *Atlantic &c. R. Co.*, 119/658, 46 S. E. 867.

Heart disease, as basis of recovery. *Charleston &c. Ry. Co.*, 23 A. 161, 97 S. E. 866.

Impairment of health. See catchwords "Mental," "Sickness," *infra*; *Railroads*.

Highway obstruction; liability for resulting injury. *Central of Ga. Ry. Co.*, 121/222, 48 S. E. 916. See *Roads and Streets*.

Hire of work animal, as element. *Telfair County*, 119/916, 47 S. E. 218; *Georgia Ry. &c. Co.*, 122/547, 50 S. E. 478; *Southern Ry. Co.*, 8 A. 111, 68 S. E. 623.

Hirer's liability. See *Bailments*.

Hiring another person's servant; measure of damages under act of 1901. *Johnson*, 134/25, 67 S. E. 423; *Orr*, 4 A. 382, 61 S. E. 518; *Pearson*, 6 A. 254, 64 S. E. 1000; *Rusher*, 6 A. 786, 65 S. E. 800.

Hog, liability for injury to crop by. *Collins*, 121/785, 49 S. E. 711.

Homicide by writing letter causing suicide, no basis to recover. *Stevens*, 140/680, 79 S. E. 564, 47 L. R. A. (N. S.) 1009.

Compensation for mental suffering not added to recovery for. *Glawson*, 9 A. 450, 71 S. E. 747.

Compensative and punitive recovery. *Savannah Electric Co.*, 124/668, 53 S. E. 109.

Life value, without deduction for expenses, under C. C. § 2782. *Atkinson*, 10 A. 389, 73 S. E. 556.

Measure of damages on widow's recovery. *Davis*, 144/62, 86 S. E. 248. See *Darby*, 144/758, 87 S. E. 1067.

Measure of recovery under Florida law. *Ga., Fla. & Ala. Ry. Co.*, 4 A. 276, 61 S. E. 505.

- No recovery by father not dependent. *Ga. R. &c. Co.*, 111/571, 36 S. E. 855.
- Of child; dependence in part supports recovery. *Savannah Electric Co.*, 124/663, 53 S. E. 109.
- Of minor child, recovery by mother for. *Atlantic Coast Line R. Co.*, 135/635, 70 S. E. 249.
- Of husband; recovery of gross value of life. *Central of Ga. Ry. Co.*, 111/14, 36 S. E. 299; (widow's right barred by husband's settlement) *So. Bell Tel. Co.*, 111/575, 36 S. E. 881, 50 L. R. A. 694.
- Of stepfather; no right in stepchild to recover. *Marshall*, 103/725, 30 S. E. 571, 41 L. R. A. 211, 68 Am. St. R. 140.
- See catchword "Life," *infra*; Parent and Child; Verdicts.
- Horse injured; measure of recovery. *Telfair County*, 119/916, 47 S. E. 218; *Georgia Ry. &c. Co.*, 122/547, 50 S. E. 478.
- House, from injury to. See catchword "Building," *supra*.
- Humiliation and mortification as basis for assessing. *Southern Ry. Co.*, 14 A. 312, 80 S. E. 697.
- From insult; recovery. *L. & N. R. Co.*, 11 A. 236, 75 S. E. 13.
- Recovery was not authorized. *Central of Ga. Ry. Co.*, 23 A. 694, 99 S. E. 235.
- See catchwords "Amount," "Feelings," *supra*; "Insult," "Mental," *infra*.
- Husband's salary earnable but for tort, not recovered by wife. *Glenn*, 1 A. 821, 58 S. E. 83.
- See catchwords "Homicide," *supra*; "Married woman," *infra*.
- Illegal contract no basis to measure damages. *Moss*, 102/808, 30 S. E. 267.
- Illness. See catchword "Sickness," *infra*.
- Imprisonment unlawful, without warrant for arrest; amount of recovery. *Piedmont Hotel Co.*, 9 A. 672, 72 S. E. 51.
- Inadequate, as cause for new trial. *Holland*, 3 A. 637, 60 S. E. 331.
- \$250 for homicide; no bias shown. *Atkinson*, 14 A. 386, 80 S. E. 862.
- Not treated as a gratuity. *Anglin*, 128/472, 57 S. E. 780.
- Inconsistent measures, election between. *Perdue*, 22 A. 284, 96 S. E. 16.
- Indefinite allegations demurrable. *Brown*, 119/153, 46 S. E. 410; *McCrary*, 119/876, 47 S. E. 341. See catchword "Pleading," *infra*.
- Indefinite evidence no basis to estimate. *James*, 115/313, 41 S. E. 585; *Swift*, 115/885, 42 S. E. 277, 58 L. R. A. 390.
- Indemnity, remedy over for. See catchword "Vouchee," *infra*.
- Independent contractor's tort, non-liability for. *Franklin County Lumber Co.*, 133/557, 66 S. E. 264.
- Liability distinct from that of employer. *L. & N. R. Co.*, 143/207, 84 S. E. 451; *Bell*, 5 A. 518, 63 S. E. 607; *Lampton*, 6 A. 147, 64 S. E. 495; *Jordan*, 7 A. 67, 66 S. E. 279; *Lee*, 9 A. 752, 72 S. E. 165.
- Indirect, from tort to other person, not recoverable; rule and exceptions. *Central Ga. Power Co.*, 141/173, 188, 190, 80 S. E. 636, 642.
- Infant's liability in tort. *Elder*, 9 A. 485, 71 S. E. 806.
- Services, from loss of. See catchword "Child," *supra*; Parent and Child.
- Injunction against public improvement, on account of special damages to private property. *Central of Ga. Ry. Co.*, 145/149, 88 S. E. 676.
- Improvement (of road or street) not restrained, where private property damaged but none of it taken. *Golightly*, 148/20, 95 S. E. 683.
- To prevent damages, ground for. *Athens Terminal Co.*, 129/393, 58 S. E. 891. Refused here. *Burrus*, 105/42, 31 S. E. 124; *Farley*, 105/324, 31 S. E. 193.
- To prevent waste. *Brigham*, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75.
- Injuries temporary and permanent, properly distinguished. *Mayor &c. of Gainesville*, 22 A. 593, 96 S. E. 549.
- Not presumed to be permanent. *Wilkins*, 19 A. 162, 91 S. E. 224.

See catchwords "Damnum absque injuria," *supra*.

Innkeeper's liability for loss of property; measure. *Watson*, 112/838, 38 S. E. 82; *Carhart*, 114/632, 40 S. E. 781, 88 Am. St. R. 45. See *Innkeepers*.

Instructions to jury on measure, error as tending to double recovery. *L. & N. R. Co.*, 137/569, 570, 73 S. E. 839, 840.

Harmless as against plaintiff who fails to recover. *Livsey*, 19 A. 687, 91 S. E. 1074.

Incomplete as to mode of calculation for permanent injuries; new trial required. *Central of Ga. Ry. Co.*, 21 A. 231, 94 S. E. 50.

Required, on measure, etc. *Central of Ga. Ry. Co.*, 135/206, 69 S. E. 165, 31 L. R. A. (N. S.) 813, 21 Ann. Cas. 1077.

Specific, as to remote damages, not required without due request. *City of Atlanta*, 19 A. 533, 91 S. E. 887.

See **Charge to jury**, catchword "Damages."

Insult and humiliation; measure of recovery. *Georgia Ry. &c. Co.*, 1 A. 833, 58 S. E. 88.

As basis of recovery. *Georgia So. Ry. Co.*, 5 A. 740, 63 S. E. 525; *Wolfe*, 6 A. 410, 65 S. E. 62; *L. & N. R. Co.*, 11 A. 236, 75 S. E. 13; *Binder*, 13 A. 381, 79 S. E. 216; *A. C. L. R. Co.*, 18 A. 621, 90 S. E. 87.

By mistake from absence of due care, liability for. *Wolfe*, 2 A. 499, 58 S. E. 899.

To passenger by servant of railroad, as basis for. *Southern Ry. Co.*, 14 A. 311, 80 S. E. 697; *A. C. L. R. Co.*, 18 A. 621, 90 S. E. 87.

See catchwords "Feelings," *supra*; "Mental," *infra*; *Railroads*, catchword "Passenger."

Insurance against fire, warehouseman's liability for omission to take. *Farmers Ginnery &c. Co.*, 140/669, 79 S. E. 474.

Insolvent insurer, claims of policyholders against, are in nature of damages from breach of contract. *Boyd*,

148/216, 96 S. E. 388; *Wright*, 148/223, 96 S. E. 433.

Liability on breach of provision of policy, or for cancellation. *Farrow*, 22 A. 540, 546, 96 S. E. 446.

Money paid for insurance, no cause to relieve tort-feasor. *City of Rome*, 134/650, 68 S. E. 330; (recovery not to be diminished). *Barrett*, 144/47, 85 S. E. 1016.

Refusal in bad faith to pay loss. Constitutional law; former decisions not followed. *Harp*, 130/726, 61 S. E. 704, 14 Ann. Cas. 299; (allegation sufficient) *Rogers*, 145/570, 89 S. E. 700; *Missouri State Life Ins. Co.*, 1 A. 447, 58 S. E. 93; *American Ins. Co.*, 6 A. 424, 65 S. E. 160.

No damages on refusal to pay, without bad faith. *Phenix Ins. Co.*, 101/331, 28 S. E. 853, 65 Am. St. R. 307; *German-American Life Asso.*, 102/721, 29 S. E. 615; *Mass. Ben. Life Asso.*, 104/257, 30 S. E. 918, 42 L. R. A. 261; *Norris*, 106/462, 32 S. E. 595; *Phenix Ins. Co.*, 112/765, 38 S. E. 67; *Phoenix Ins. Co.*, 115/113, 41 S. E. 240, 57 L. R. A. 752, 90 Am. St. R. 98 (overruled: *Harp*, 130/727, 732-61 S. E. 704, 14 Ann. Cas. 299).

Unauthorized by evidence. *Atlas Assurance Co.*, 144/307, 87 S. E. 1; *Southern States Life Ins. Co.*, 145/791, 89 S. E. 843; *Ætna Ins. Co.*, 9 A. 759, 72 S. E. 300; *Queen Ins. Co.*, 10 A. 289, 73 S. E. 536; *Georgia Life Ins. Co.*, 12 A. 855, 78 S. E. 1115.

See **Insurance**.

Interest, addition of, to actual damages, in discretion of jury. *Morris*, 2 A. 61, 58 S. E. 316.

Addition to finding, in contract breach, discretionary, not mandatory. *Snowden*, 110/99, 35 S. E. 309; see *McCarthy*, 126/762, 56 S. E. 72; *Happ Co.*, 145/836, 838, 90 S. E. 61.

Addition of, on breach of contract of bailment. *Bunn*, 18 A. 66, 88 S. E. 798.

Addition of, from date of injury by trespass, when allowed. *McConnell*, 134/96, 67 S. E. 440; see *Hardwood Mfg. Co.*, 126/55, 54 S. E. 814.

As part damages in trover. **Drury**, 145/558, 89 S. E. 487.

Discretionary, on recovery for killing live stock. **Macon, Dublin & Co.**, 10 A. 104, 72 S. E. 936.

Ex nomine, irregularity in allowing, curable by direction to write off amount from verdict. **A. C. L. R. Co.**, 18 A. 279, 88 S. E. 101.

Error in including, in verdict for sum exceeding amount sued for, on account of conversion.

Gratuitous finding of interest, no evidence of bias. **Macon & Co. R. Co.**, 125/88, 54 S. E. 197.

Increase of finding on property loss. **Albany & N. Ry. Co.**, 6 A. 271, 64 S. E. 1114; **Georgia R. & Co.**, 6 A. 746, 65 S. E. 719.

Is no separate item; but is to be returned as part of solid sum found, in what cases. **Western & A. R. Co.**, 102/13, 29 S. E. 130; **Gress Lumber Co.**, 104/611, 30 S. E. 810; **Snowden**, 110/99, 35 S. E. 309; **Southern Ry. Co.**, 115/381, 41 S. E. 649; **Central of Ga. Ry. Co.**, 124/323, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 4 Ann. C. 128; **Maryland Casualty Co.**, 124/859, 53 S. E. 395; **Drury**, 145/558, 89 S. E. 487; **Wadley So. Ry. Co.**, 145/689, 89 S. E. 765; **Mitchell**, 3 A. 543, 60 S. E. 295; **Tifton & Co. Ry. Co.**, 4 A. 191, 60 S. E. 1087; **Central of Ga. Ry. Co.**, 8 A. 1, 68 S. E. 775; **A. C. L. R. Co.**, 14 A. 196, 80 S. E. 680; **Georgia Refining Co.**, 15 A. 460, 83 S. E. 795; **Standard Oil Co.**, 15 A. 572, 84 S. E. 69.

Is ordinarily the measure of damages on refusal to pay money due. **Central Bank**, 139/57, 76 S. E. 587; **A. C. L. R. Co.**, 18 A. 279, 88 S. E. 101. **Clover**, 140/130, 78 S. E. 714.

Loss of, on investment, when not an element. **Albany Phosphate Co.**, 4 A. 771, 62 S. E. 533; **Oxford Mills**, 6 A. 302, 64, 64 S. E. 1008, 65 S. E. 791.

Not allowed, in addition to special damages including allowance for pain, etc. **Central of Ga. Ry. Co.**, 23 A. 96, 97 S. E. 553.

Not claimed as such, by adding sum equal thereto. **Seaboard Air-Line Ry.**, 142/381, 82 S. E. 1066.

Not inherent to unliquidated damages; and extinguished by payment. **L. & N. R. Co.**, 5 A. 428, 63 S. E. 524.

Not to be added to discretionary or punitive damages from personal injury, etc. **Western & A. R. Co.**, 102/13, 29 S. E. 130; **Seaboard Air-Line Ry.**, 132/71, 63 S. E. 1103.

On money necessarily borrowed, allowable as an element. **Carr**, 12 A. 830, 79 S. E. 41.

On value of property lost, allowed. **Rutherford**, 1 A. 499, 57 S. E. 927.

Ordered written off verdict. **W. & A. R. Co.**, 104/384, 30 S. E. 868.

Penalty paid by sheriff on rule, recoverable of party causing loss. **Linder**, 122/426, 50 S. E. 124.

Question as to interest not properly raised. **Scott**, 22 A. 32, 95 S. E. 332.

Separate finding illegal; corrected by causing jury to retire and rewrite. **Seaboard Air-Line Ry.**, 136/505, 71 S. E. 887; **Seaboard Air-Line Ry.**, 139/429, 77 S. E. 387.

Verdict here upheld. **Mayor & Co. of Milledgeville**, 139/692, 78 S. E. 35. See catchword "Delay," supra; Interest. Interference with contract relation, as ground of liability. **Mitchell**, 143/827, 85 S. E. 1050, Ann. Cas. 1917A, 469. Irreparable; allegation too general. **Wiggins**, 117/162, 43 S. E. 432.

As cause for equitable relief, in case of contract relations. **Collins**, 142/711, 83 S. E. 660.

As cause for injunction. **Brown**, 126/248, 55 S. E. 24, 7 Ann. C. 1026; **Hart**, 126/439, 55 S. E. 189; **Burton**, 126/805, 55 S. E. 933; (against breach of contract) **Hamby**, 127/792, 56 S. E. 1033; (against trespass) **Huguley**, 127/202, 56 S. E. 298; **Baker**, 127/649, 57 S. E. 62; **Lewis**, 127/789, 56 S. E. 998; **Brigham**, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75.

Blasting rock underground. *St. Amand*, 120/253, 47 S. E. 949.

Conclusion of pleader. *Huxford*, 124/185, 52 S. E. 439.

Structure in alley. *Murphey*, 115/41, 41 S. E. 585.

Timber cutting. *Ocmulgee Lumber Co.*, 112/528, 37 S. E. 749; *Camp*, 112/872, 38 S. E. 71, 52 L. R. A. 755; *Massee-Felton Lumber Co.*, 122/297, 50 S. E. 92; *Gray Lumber Co.*, 122/342, 50 S. E. 164; *Wethington*, 124/1024, 53 S. E. 505; *Stewart*, 132/205, 63 S. E. 817.

Water diversion. *St. Amand*, 120/253, 47 S. E. 949; *Stoner*, 124/756, 52 S. E. 894.

Items may be required by special demurrer. *Turley*, 127/594, 56 S. E. 748, 8 L. R. A. (N. S.) 695.

Not pleaded, not provable. *Snowden*, 105/384, 31 S. E. 110.

Specification of, required by demurrer. *Central Ga. Power Co.*, 141/173, 191, 196, 80 S. E. 636, 645, 648.

Joinder of action for damages with suit on open account. *Daniels*, 23 A. 644, 99 S. E. 228.

Of claims for damages and penalty. *Ga., Fla. & Ala. Ry. Co.*, 12 A. 117, 76 S. E. 1056.

Of distinct causes, and lump sum claimed; action demurrable. *Colquitt*, 146/249, 91 S. E. 70.

Of parties to action. Life-tenant and remainderman. *W. & A. R. Co.*, 129/526, 59 S. E. 266.

Joint liability must be based on joint negligence or concert of action. *Albany Transit Co.*, 18 A. 241, 89 S. E. 182; *Key*, 18 A. 472, 89 S. E. 593.

Recovery not sustained without joint ownership. *L. & N. R. Co.*, 140/655, 79 S. E. 556.

Right of action over, for contribution or indemnity, where one has been sued alone and compelled to pay. *Central of Ga. Ry. Co.*, 23 A. 483, 98 S. E. 406; contrast *Central of Ga. Ry. Co.*, 23 A. 346, 98 S. E. 256.

Suit not jointly maintainable against different persons creating nuisance

from separate factories. *Key*, 18 A. 472, 89 S. E. 593.

Telegraph and railroad companies; injury by wire. *Western Union Tel. Co.*, 23 A. 169, 98 S. E. 116.

Tort-feasors; liability of both or either. *Jordan*, 7 A. 67, 66 S. E. 269. Partners. *Malone & Co.*, 6 A. 115, 64 S. E. 666; *Thompson*, 7 A. 212, 66 S. E. 629; *Cedartown Supply Co.*, 13 A. 29, 78 S. E. 686; *Burch*, 14 A. 155, 80 S. E. 664. Recovery against but one. *Western & A. R. Co.*, 6 A. 386, 65 S. E. 48. Remedy of one against the other. *Central of Ga. Ry. Co.*, 9 A. 628, 71 S. E. 1076.

Verdict, form of, in suit against joint tort-feasors. *May Bros. Inc.*, 23 A. 34, 97 S. E. 277.

See catchword "Conspiracy," supra; Actions; Fraud; Railroads; Torts.

Joint trespassers, attaching plaintiff and levying officer were not, without concert of action. *Singer Co.*, 8 A. 553, 69 S. E. 1134.

Law as to different verdicts and judgments against joint trespassers, not applicable to personal torts. *Lee*, 21 A. 558, 563, 94 S. E. 888.

Judge of court with jurisdiction not liable in, for void judicial act. *Calhoun*, 106/336, 32 S. E. 86, 43 L. R. A. 630, 71 Am. St. R. 254.

Judgment by judge without jury, in suit on insurance policy, was authorized. *Great Eastern Casualty Co.*, 147/119, 92 S. E. 939.

See catchwords "Default," "Demurrer," supra.

Jurisdiction. See catchwords "City court," supra; "Justice's court," infra; Jurisdiction.

Jury's province as to. *Southern Ry. Co.*, 3 A. 548, 60 S. E. 297.

Justice's court action, form of. *Southern Ry. Co.*, 118/411, 45 S. E. 306.

Cannot render judgment by default for damages. *Ga., Fla. & Ala. Ry. Co.*, 3 A. 241, 59 S. E. 717.

Jurisdiction limited as to amount. *Dorsey*, 105/88, 31 S. E. 736; *Jennings*, 127/778, 56 S. E. 1026. Fixed by

principal amount claimed; plaintiff not bound to claim all. *Chicago &c. Ry.*, 16 A. 388, 85 S. E. 615; *Bowers*, 17 A. 779, 88 S. E. 708; *Southern Ry. Co.*, 20 A. 673, 93 S. E. 254; see *A. C. L. R. Co.*, 21 A. 212, 94 S. E. 86; *James*, 22 A. 450, 96 S. E. 333.

Pleading in; sufficient allegations. *Ga. So. & Fla. Ry. Co.*, 1 A. 203, 58 S. E. 236; *So. Ex. Co.*, 1 A. 294, 57 S. E. 1066; *Southern Ry. Co.*, 1 A. 734, 58 S. E. 244.

Rule as to proof of open account not applied. *Caudell*, 119/21, 45 S. E. 712.

Some evidence showed excess of \$100, but case retained. *Georgia Ry. &c. Co.*, 122/290, 50 S. E. 124.

See *Justices' Courts*.

Knowledge by vendor, of vendee's intent to construct, no cause to prevent recovery for injury. *L. & N. R. Co.*, 135/420, 69 S. E. 364.

Labor, diminution of capacity to; measure of damages. *Macon Ry. &c. Co.*, 120/515, 48 S. E. 232; *Southern Ry. Co.*, 136/591, 71 S. E. 802.

See catchword "Pain," *infra*.

Land, exact computation on breach of contract to sell. *Lytle*, 122/459, 50 S. E. 402.

See catchwords "Building," "Fire," "Flood," *supra*; "Trespas," *infra*; **Contracts**; **Municipal Corporations**; **Sales**.

Landlord's liability in, for injury by defects and neglect to repair; how defeated. *Donehoe*, 141/224, 80 S. E. 712; *Clements*, 141/311, 80 S. E. 1004, *L. R. A.* 1917A, 993; *Florence*, 145/265, 88 S. E. 933; *McArthur*, 4 A. 429, 61 S. E. 859; *Monahan*, 4 A. 680, 62 S. E. 127; see *Johnson*, 4 A. 131, 60 S. E. 1023; *Thompson*, 6 A. 80, 64 S. E. 336.

Dangerous premises, injury to third person on. *Bailey*, 8 A. 713, 70 S. E. 141.

Eviction wrongful; elements and measure of damages. *Roberson*, 7 A. 142, 66 S. E. 542; *Daniel*, 9 A. 842, 72 S. E. 438; cf. *Hundley*, 9 A. 268, 70 S. E. 1115.

On breach of contract as to repairs and improvements. *Roberson* 145/626, 80 S. E. 769.

On breach of rental contract. *McIntosh*, 12 A. 305, 77 S. E. 6; *Moore*, 13 A. 392, 79 S. E. 246.

On wrongful taking of tenant's crop through levying officer. *Cargle*, 143/597, 85 S. E. 764.

Recovery by landlord from one who furnished supplies and took all of tenant's crop. *McElmurray*, 110/64, 35 S. E. 149.

Recovery on removal of trade-fixture. *Armour*, 147/639, 95 S. E. 228.

Result of work by contractor. *Bell*, 5 A. 518, 63 A. S. E. 607.

Tenants' and his partner's recovery for tort of landlord. *DeFoor*, 133/617, 66 S. E. 786.

See catchword "Recoupment," *infra*; **Landlord and Tenant**; **Negligence**.

Landowner's liability for defective premises. *Central of Ga. Ry. Co.*, 128/600, 58 S. E. 154.

Lease, measure on repudiation of. *Reid*, 134/510, 68 S. E. 97.

Leasehold, for interfering with possession of. *Bass*, 110/698, 36 S. E. 244.

Deprivation of; measure. *Hayes*, 1 A. 26, 57 S. E. 1087.

For injury to. *Towaliga Falls Co.*, 6 A. 750, 65 S. E. 844; *Beasley*, 17 A. 615, 87 S. E. 907.

Lessen, duty of exercising ordinary care to. *Manly Mfg. Co.*, 105/235, 31 S. E. 156; *Brown*, 119/88, 91, 46 S. E. 71; *Aikin*, 119/263, 46 S. E. 93; *Central of Ga. Ry. Co.*, 135/525, 69 S. E. 818; *Southern Ry. Co.*, 139/339, 77 S. E. 168; *Nashville &c. Ry.*, 146/294, 91 S. E. 69; *Realty Co.*, 4 A. 402, 61 S. E. 832; *Western Union Tel. Co.*, 5 A. 811, 63 S. E. 934; *Oxford Mills*, 6 A. 644, 65 S. E. 791; *McNaughton*, 8 A. 547, 70 S. E. 61; *Mimms*, 9 A. 718, 72 S. E. 271; *National Co.*, 9 A. 725, 72 S. E. 191; *Maxwell*, 9 A. 745, 72 S. E. 292; *Salant*, 10 A. 263, 73 S. E. 426; *Malloch*, 10 A. 605, 73 S. E. 1073; *Ga., Fla. & Ala. Ry. Co.*, 12 A. 180, 76 S. E. 1063; *Betts Co.*, 14 A. 786, 82 S. E. 474; *Dixie Cotton Co.*, 20 A. 256, 92

S. E. 1008; *Keene*, 23 A. 265, 97 S. E. 893; *Atlanta Oil &c. Co.*, 23 A. 342, 98 S. E. 232; *Whitlock Printing Press Co.*, 23 A. 761, 99 S. E. 312.

Contract breach; application or non-application of the rule. *Phosphate Mining Co.*, 20 A. 660, 93 S. E. 532.

Exception to rule, in case of positive or continuous tort. *Holbrook*, 121/319, 48 S. E. 922; (invasion of right) *City of Jackson*, 146/250, 91 S. E. 63; (rule not applied to warranty of title) *Parker*, 143/421, 85 S. E. 338; (exception, when not applied) *Georgia &c. Ry. Co.*, 120/380, 47 S. E. 942.

Harmless error in not submitting rule. *Farkas*, 19 A. 472, 92 S. E. 892. Lessening, recovery for cost of work in. *L. & N. R. Co.*, 143/208, 84 S. E. 451. *Levy* unlawful, recovery on. *Morris*, 126/470, 54 S. E. 1045, 115 A. S. R. 105. Recovery, how limited. *Maxwell*, 9 A. 745, 72 S. E. 292.

Liability over, not between tort-feasors; rule and exceptions. *Central of Ga. Ry. Co.*, 140/309, 78 S. E. 931.

Not passed to vendee of tort-feasor. *DeLoach*, 137/633, 73 S. E. 1072. See catchwords "Joint," supra; "Vouch-ee," infra.

Libel and slander; general and special damages. *Brown*, 109/431, 34 S. E. 717; *Dun*, 111/416, 36, S. E. 808, 50 L. R. A. 870; *Ford*, 116/655, 42 S. E. 998; *Watters*, 120/424, 47 S. E. 911; *Flanders*, 120/885, 48 S. E. 327; *Flanders*, 124/714, 52 S. E. 687; *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103; *Pavesich*, 122/191, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. R. 104, 2 Ann. C. 561.

Licensee or invitee, liability for injury to, resulting from unsafe premises. *Central Ga. Power Co.*, 144/124, 86 S. E. 319; *Jones*, 22 A. 717, 97 S. E. 112.

Life expectancy. Method of calculation to ascertain value of life. *Savannah Electric Co.*, 124/667, 53 S. E. 109; *A. C. L. R. Co.*, 8 A. 195, 68 S. E. 875; *Standard Oil Co.*, 15 A. 572, 84 S. E. 69; *City of Thomasville*, 17 A. 627, 87 S. E. 923; *W. & A. R. Co.*, 22 A. 315, 96 S. E. 17.

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Compensation for life means its value in money. *Atlantic Coast Line R. Co.*, 132/189, 63 S. E. 834.

Full value of life, in action for homicide. *Central of Ga. Ry. Co.*, 138/145, 74 S. E. 1077.

In suits for permanent personal injuries. *Central of Ga. Ry. Co.*, 21 A. 235, 94 S. E. 50.

No fixed measure; what evidence considered. *Central of Ga. Ry. Co.*, 112/926, 38 S. E. 365, 53 L. R. A. 210.

Table, not an essential part of evidence, to estimate value of life. *Dalton Excelsior Co.*, 18 A. 336, 91 S. E. 440.

See catchword "Tables," infra.

Limitation, action barred by. *Small*, 102/248, 29 S. E. 430. Not barred. *Allen*, 102/596, 29 S. E. 443.

Ascertainment impossible at time of breach, statute not tolled. *Houser*, 6 A. 102, 64 S. E. 293.

"Injuries to the person," how inclusive. *Gordon*, 129/532, 59 S. E. 232, 13 L. R. A. (N. S.) 549.

Nuisance, creation and maintenance of. *A. C. L. R. Co.*, 139/422, 77 S. E. 568.

Personalty, for injury to. *Raleigh &c. R. Co.*, 6 A. 616, 65 S. E. 586.

Runs not before injury accrues. *Linder*, 122/425, 50 S. E. 124.

Runs not pending consideration of claim presented to municipality. *Mayor &c. of Unadilla*, 145/440, 89 S. E. 423.

Street-grade changed; action not barred. *Mayor &c. of East Rome*, 124/852, 53 S. E. 103.

See catchwords "Nuisance," "Trespass," infra; *Limitation of Actions*.

Limitation of liability as to amount, by contract. *Central of Ga. Ry. Co.*, 117/938, 43 S. E. 981.

Arbitrary preadjustment invalid. *L. & N. R. Co.*, 6 A. 550, 65 S. E. 308.

Invalid stipulation for. *Charleston &c. Ry. Co.*, 7 A. 353, 66 S. E. 1018; *Central of Ga. Ry. Co.*, 8 A. 1, 68 S. E. 775.

When not enforced. *Southern Ex. Co.*, 134/445, 67 S. E. 944, 137 Am. St. R. 227. Not enforced, if injury

caused by negligence. **Adams Express Co.**, 138/443, 455, 75 S. E. 596, 601, Ann. Cas. 1913D, 976; see **Post**, 138/963, 76 S. E. 45.

See **Carriers; Railroads; Telegraphs.**

Liquidated. Breach of contract to buy land. **Lytle**, 122/458, 50 S. E. 402.

Contract price, reduction of, not unreasonable. **Mayor &c. of Washington**, 132/849, 65 S. E. 80.

Contractual forfeiture, when not exacted. **Florida R. Co.**, 112/1, 37 S. E. 130; **Foot & Davies Co.**, 115/985, 42 S. E. 413; **Scarratt**, 117/184, 43 S. E. 413.

Defined. **Council**, 11 A. 827, 76 S. E. 603.

Delay by contractor in completing building. **Heard**, 101/619, 28 S. E. 986; **McKenzie**, 142/376, 82 S. E. 1062; **Collins**, 142/703, 83 S. E. 660.

Distinct from penalty. **Florence Wagon Works**, 8 A. 197, 68 S. E. 866.

Forfeiture of deposit by bidder. **Gulf Paving Co.**, 22 A. 374, 96 S. E. 392; reversed on certiorari, 149/114, 99 S. E. 374.

From tort, must first be established by agreement or judgment. **Baker**, 135/633, 70 S. E. 239.

Insurer's expense of repair was not. **Maryland Casualty Co.**, 124/859, 53 S. E. 395.

Not unreasonable, on failure of purchaser of land to comply with contract. **Martin**, 144/660, 664, 87 S. E. 902.

Note for purchase-price of land, with stipulation for amount to be due as rent on default of payment; how treated. **McDaniel**, 22 A. 223, 95 S. E. 724.

Penal amount of bond is not, *prima facie*. **Mayor &c. of Brunswick**, 4 A. 722, 62 S. E. 475.

Penal sum in nature of, fixed in bond to comply with law. **City of Albany**, 11 A. 746, 76 S. E. 105.

Penalty not treated as. **Abrams**, 9 A. 699, 72 S. E. 64.

Statutory penalty is. **Pennington**, 3 A. 666, 60 S. E. 485.

Stipulated penalty not recovered as. **Floding**, 137/531, 73 S. E. 729.

Stipulation in nature of penalty, not enforced. **George W. Muller Co.**, 145/484, 89 S. E. 615.

Value of property lost by deceit. **Rutherford**, 1 A. 499, 57 S. E. 927.

Wages, retention of part, on quitting work without notice, no forfeiture. **Gleaton**, 5 A. 420, 63 S. E. 520.

See **Accounts (Open); Bonds; Contracts; Interest.**

Livery-stable keeper's recovery on account of disease communicated to his horses by other horses placed in his stable. **Wood**, 21 A. 280, 94 S. E. 283.

Live-stock value; evidence irrelevant. **W. & A. R. Co.**, 104/384, 30 S. E. 868. Relevant. **Southern Ry. Co.**, 104/560, 30 S. E. 795.

Loss, need of proving. Evidence of person's solvency, when required. **Gardner**, 14 A. 403, 81 S. E. 259.

Not proved, no recovery on breach of duty. **Kent**, 136/857, 72 S. E. 413.

Proof of, not sufficient; value of title, and attorney's compensation.

Denney, 2 A. 146, 58 S. E. 318.

Word "loss" used in sense of damages. **Turner**, 123/866, 51 S. E. 762.

Malice and want of probable cause, need of alleging, in what case of trespass. **McCormick**, 13 A. 61, 78 S. E. 779.

Malicious arrest and prosecution; measure not exact. **McPherson**, 137/131, 72 S. E. 948.

Injury to business; recovery. **Southern Ry. Co.**, 126/404, 55 S. E. 37, 7 L. R. A. (N. S.) 926.

Procurement of contract breach; liability. **Employing Printers Club**, 122/509, 50 S. E. 353, 69 L. R. A. 90, 106 Am. St. R. 137, 2 Ann. C. 694.

Use of process (eviction; elements for recovery). **McSwain**, 6 A. 10, 64 S. E. 116; (recovery regulated by circumstances) **Stewart**, 11 A. 661, 75 S. E. 991.

See **Malicious Arrest and Prosecution.**

Malpractice; elements of damage. Moon, 111/206, 36 S. E. 635.

Of physician or surgeon; election of action on contract or in tort. Stokes, 20 A. 325, 93 S. E. 27.

See **Hospitals; Physicians and Surgeons.**

Market value, ascertainment of, as to property abutting on street changed. City of Atlanta, 142/325, 82 S. E. 899.

Ascertainment of, in condemnation proceedings. Central Ga. Power Co., 137/120, 348, 72 S. E. 120, 73 S. E. 505; (when evidence not restricted to market value) Elbert County, 16 A. 837, 86 S. E. 651.

At initial and terminal points. Chattanooga So. R. Co., 133/127, 65 S. E. 285.

At place other than delivery point. Ford, 133/238, 65 S. E. 444.

Consequential enhancement and injury both considered. Mayor &c. of Macon, 2 A. 356, 58 S. E. 540.

Compared with contract price; difference as measure. Christophulos Co., 4 A. 822, 62 S. E. 562; (at what place) Western Union Tel. Co., 5 A. 809, 63 S. E. 934; (how shown) Lamb, 17 A. 7, 86 S. E. 252.

Decrease, elements considered in ascertaining. Mallory, 131/271, 62 S. E. 179; Central Ga. Power Co., 139/416, 77 S. E. 565; Atkinson, 140/52, 78 S. E. 465; Potts, 140/433, 79 S. E. 110; Flemister, 140/511, 79 S. E. 148; Central Ga. Power Co., 141/173, 186, 191, 80 S. E. 636 642, 645; (closing of street and erection of underpass; relevant evidence) Central of Ga. Ry. Co., 145/149, 88 S. E. 676; (nuisance by fertilizer works) Pelham Phosphate Co., 21 A. 554, 94 S. E. 846.

Decrease, not in price per pound, but in loss of weight. Southern Railway Co., 18 A. 767, 90 S. E. 656.

Delay in delivery. Southern Ex. Co., 134/446, 67 S. E. 944, 137 Am. St. R. 227; Hardwood Lumber Co., 134/821, 68 S. E. 725, 32 L. R. A. (N. S.) 192.

Depreciation as measure. Barfield, 109/388, 34 S. E. 596; Atlantic &c. Ry. Co., 125/329, 54 S. E. 148.

Depreciation by blasting rock and diverting water. L. & N. R. Co., 143/206, 84 S. E. 451.

Depreciation by proximity of lawful business, no recovery for. Simpson, 143/465, 85 S. E. 344, L. R. A. 1915E, 430.

Depreciation illustrated by matters not in themselves elements of damages. Chattahoochee Valley Ry. Co., 9 A. 83, 70 S. E. 683; (proof of rental value to illustrate) Central of Ga. Ry. Co., 7 A. 464, 67 S. E. 118.

General estate; rule of determining value. City of Newnan, 145/380, 89 S. E. 336.

Goods sold; need of proving value. Sizer, 129/143, 58 S. E. 1055; (fruit; admissibility of testimony by witness engaged in business). L. & N. R. Co., 144/683, 87 S. E. 889.

How ascertained. Cost alone not determinative. Watson, 112/838, 38 S. E. 82.

How ascertained with reference to place at which there is no market. Twin City Lumber Co., 22 A. 578, 96 S. E. 437.

Inadequate or inaccurate instructions to jury. Odum, 16 A. 350, 85 S. E. 361; Savannah El. Co., 16 A. 635, 85 S. E. 932.

Increase affecting recovery. Farkas, 103/150, 29 S. E. 700, 68 Am. St. R. 88; Mayor &c. of Brunswick, 103/234, 29 S. E. 701, 68 A. St. R. 92; Estes, 103/780, 30 S. E. 246.

Injury to improved realty. Empire Mills Co., 18 A. 253, 89 S. E. 530.

Land value, clay deposits a part of; not a separate item. Atlanta Terra Cotta Co., 132/538, 64 S. E. 563.

Lease price and rental value. Bridges, 6 A. 689, 65 S. E. 700.

Measure by value on day of breach. Baker, 130/257, 60 S. E. 551.

Measure of recovery for loss of property; evidence admissible. Atlanta Baggage &c. Co., 4 A. 844, 61 S. E. 407.

Need of proof. Adams, 18 A. 367, 89 S. E. 441.

Non-expert testimony, when received. Miller, 132/581, 64 S. E. 658.

Not measure on breach of building contract. *Candler Investment Co.*, 4 A. 767, 62 S. E. 479.

Not sole item for recovery for nuisance. *Jones*, 6 A. 506, 65 S. E. 361.

Opinion evidence as to, competent. *Mayor &c. of Americus*, 3 A. 159, 59 S. E. 434.

Permanent injury to realty. *L. & N. R. Co.*, 139/544, 77 S. E. 796.

Pleading, demurrable defect in. *Smith Co.*, 6 A. 522, 65 S. E. 320.

Pleading required. *Phillips Co.*, 7 A. 222, 66 S. E. 623; see *Deen*, 7 A. 509, 67 S. E. 212.

Property, market value of, held to be the measure, instead of amount advanced for maintenance. *Upmago Lumber Co.*, 148/848, 98 S. E. 498.

Public improvement, from injury by. *City of Atlanta*, 17 A. 426, 87 S. E. 698.

Railroad excavation in street. *L. & N. R. Co.*, 135/420, 69 S. E. 564, cf. *Darnall*, 134/656, 68 S. E. 584; *Golightly*, 148/20, 95 S. E. 683.

Railroad location. *Chattahoochee Valley Ry. Co.*, 9 A. 83, 70 S. E. 683.

Railroad right of way of no general value for other use. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. Cas. 734.

Relevant evidence on diminution. *Langley*, 118/591, 45 S. E. 486, 98 Am. St. R. 133.

Rental agreed on, and higher value. *Williams Wagon Works*, 14 A. 158, 80 S. E. 668.

Staple and other articles; distinction. *Southern Ex. Co.*, 1 A. 301, 57 S. E. 1066, *Atlantic Coast Line R. Co.*, 1 A. 667, 57 S. E. 1030.

Street change, difference after; how estimated. Elements making up, not each for separate compensation. *Nelson*, 138/253, 75 S. E. 245.

Timber cutting. *Fender*, 145/505, 89 S. E. 518.

Trespass on timber. *McConnell*, 134/96, 67 S. E. 440.

See catchword "Value," *infra*.

Married woman, elements for recovery by, on personal injury to herself. *Wrights-*

ville &c. R. Co., 9 A. 371, 71 S. E. 691; *Berrien County*, 13 A. 777, 79 S. E. 1129; (loss of capacity to labor) *Central & Ga. Ry. Co.*, 145/656, 89 S. E. 760.

Not entitled to recover from husband for personal injury from his negligence. *Heyman*, 19 A. 634, 92 S. E. 25.

Recovery for loss of earning capacity, caused by injury before marriage. *Georgia Northern Ry. Co.*, 19 A. 503, 91 S. E. 1045.

Services, husband's recovery for loss of, by homicide. *Standard Oil Co.*, 15 A. 572, 84 S. E. 69; *W. & A. R. Co.*, 22 A. 314, 96 S. E. 17.

Measure erroneous; verdict not upheld. *Sanders*, 124/684, 52 S. E. 884.

Error in confusing distinct rules as to. *L. & N. R. Co.*, 143/207, 208, 84 S. E. 451.

Evidence admissible where allegation incorrect. *Ford*, 120/708, 48 S. E. 180.

Harmless error in stating measure, where no damages found. *Carstarphen*, 8 A. 162, 68 S. E. 848. *Friedin*, 11 A. 790, 76 S. E. 167; *Binder*, 13 A. 381, 79 S. E. 216; *Livsey*, 19 A. 687, 91 S. E. 1074; *Lewis Mfg. Co.*, 147/203, 93 S. E. 206.

Immaterial error, in absence of specific complaint of amount of verdict. *Central of Ga. Ry. Co.*, 18 A. 114, 88 S. E. 1003. This ruling criticised. *Georgia Northern Ry. Co.*, 19 A. 503, 91 S. E. 1045. But see *Seaboard Air-Line Ry.*, 23 A. 621, 99 S. E. 226.

Instructions to jury considered. *Central of Ga. Ry. Co.*, 18 A. 114, 364, 88 S. E. 1003, 89 S. E. 433.

Instructions to jury required. *Central of Ga. Ry. Co.*, 127/593, 56 S. E. 770; *Mayor &c. of Washington*, 144/102, 86 S. E. 220. Omission to state measure, in charging jury; exception too general. *Smith*, 23 A. 726, 99 S. E. 309.

Not alleged; action upheld for punitive or nominal damages. *Selman*, 4 A. 377, 61 S. E. 501.

On breach of contract of sale, by failure to deliver. *Matthews*, 23 A. 676, 19 S. E. 308.

Proof of liability precedes consideration of measure. *Fain*, 3 A. 734, 60 S. E. 359.

Proof of measure must be given, to recover actual damages (market price of goods). *Bloom*, 116/784, 43 S. E. 54; (price received for land) *Croom*, 145/347, 89 S. E. 199.

Ruling on demurrer did not adjudge measure. *Richmond Hosiery Mills*, 123/216, 51 S. E. 290.

Word "measure" used in sense of amount, no error for reversal. *Atlanta &c. Ry. Co.*, 110/247, 34 S. E. 350.

See catchword "Value," *infra*.

Medical expenses. Allegations of amount may be required on demurrer. *Western Union Tel. Co.*, 111/551, 36 S. E. 859.

Medicine for unlawful use, no recovery for mistake in furnishing. *Lewis*, 6 A. 419, 65 S. E. 189.

Mental anguish as basis of assessment (passenger ejected). *Puckett*, 9 A. 589, 71 S. E. 944.

Breach of duty, without injury to person or pecuniary loss, no recovery for. *Chapman*, 88/763, 15 S. E. 901, 17 L. R. A. 430, 30 Am. St. R. 183; *Giddens*, 111/824, 35 S. E. 638; *Seifert*, 129/181, 58 S. E. 699, 11 L. R. A. (N. S.) 1149, 121 Am. St. R. 210; *So. Bell Tel. Co.*, 139/385, 77 S. E. 388; *So. Bell Tel. Co.*, 140/507, 79 S. E. 136; *Sappington*, 127/178, 56 S. E. 311; *Central of Ga. Ry. Co.*, 141/51, 80 S. E. 282, 49 L. R. A. (N. S.) 429, Ann. Cas. 1915A, 1076; *Glenn*, 1 A. 821, 58 S. E. 83; *Ga. Ry. &c. Co.*, 1 A. 838, 58 S. E. 88; *Enloe*, 5 A. 502, 65 S. E. 590; *Western Union Tel. Co.*, 8 A. 514, 70 S. E. 65; *Green*, 9 A. 751, 72 S. E. 190; *Western Union Tel. Co.*, 16 A. 204, 84 S. E. 986; *Dresbach*, 17 A. 79, 86 S. E. 256; *Martin*, 18 A. 226, 89 S. E. 495; *McNeal*, 23 A. 473, 98 S. E. 409. But intentional, wanton, and wilful wrong, without injury to person, purse, or reputation, is ground for recovery. *Dunn*, 2 A. 845, 59 S. E. 189.

Caused by injury to property, no basis for recovery. *Davis*, 21 A. 265, 94 S. E. 274.

Caused by non-delivery of telegram, no basis of recovery. *Cole*, 23 A. 479, 98 S. E. 407.

Dead body mutilated; recovery without pecuniary loss. *Medical College*, 1 A. 468, 57 S. E. 1093; cf. *L. & N. R. Co.*, 123/62, 51 S. E. 24, 3 Ann. Cas. 128.

Facts for submitting issue. *Atlanta &c. R. Co.*, 128/397, 57 S. E. 686.

Fear of death, as element. *Watson*, 124/121, 52 S. E. 152, 1 L. R. A. (N. S.) 1178, 110 Am. St. R. 157.

Female passenger could not recover for distress, shock, and nervous condition from being put off train, under the facts. *Charleston &c. Ry. Co.*, 23 A. 161, 97 S. E. 866.

From assault on husband, when no basis for assessing damages. *Goddard*, 14 A. 722, 82 S. E. 304.

From assault to rape, as cause for recovery. *Pye*, 9 A. 725, 72 S. E. 190.

From breach of promise of marriage. *Anderson*, 125/71, 54 S. E. 197, 114 Am. St. R. 85, 5 Ann. C. 103.

From deprivation of clothes, etc., as element. *Ford*, 8 A. 295, 68 S. E. 1072.

From diminished capacity to labor. *Atkinson*, 13 A. 100, 78 S. E. 830; *City of Rome*, 13 A. 386, 79 S. E. 243.

From family sickness by nuisance, no element for recovery. *A. C. L. R. Co.*, 139/423, 77 S. E. 568.

From humiliation by affront or insult, as element; evidence of physical result. *Georgia So. Ry. Co.*, 5 A. 744, 63 S. E. 525; s. c., *Ga. So. &c. Ry. Co.*, 8 A. 277, 68 S. E. 943.

From insult accompanying physical tort. *Southern Ry. Co.*, 14 A. 311, 80 S. E. 697.

From invasion of legal right (abduction of child); recovery. *Selman*, 4 A. 377, 61 S. E. 501; (violation of right of privacy) *Pavesich*, 122/190, 205, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. R. 104, 2 Ann. C. 561.

From loss of earning capacity, an element. *Brush Electric Co.*, 107/72, 32 S. E. 902.

- From mistake of injured person, no basis of recovery. **Johnson**, 13 A. 298, 79 S. E. 91.
- Included in allegation of pain. **Wrightsville &c. R. Co.**, 9 A. 155, 70 S. E. 955.
- Misinformation by carrier's servants resulting in. **Atkinson**, 11 A. 463, 75 S. E. 676; **Southern Ry. Co.**, 11 A. 603, 75 S. E. 925.
- Negligent delay, when no element for recovery. **Giddens**, 111/824, 35 S. E. 638; **Seifert**, 129/181, 58 S. E. 699, 11 L. R. A. (N. S.) 1149, 121 Am. St. R. 210.
- Negligent omission of public duty, no element for recovery (see last two citations). **So. Bell Tel. Co.**, 139/385, 77 S. E. 388.
- Pleading authorized charge to jury. **Social Circle Cotton Mill Co.**, 23 A. 604, 99 S. E. 238.
- Recovery on allegation of "great pain." **Nashville &c. Ry.**, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. C. 210.
- Suit was not solely for. **Glawson**, 9 A. 450, 71 S. E. 747; **May Bros. Inc.**, 23 A. 33, 97 S. E. 277.
- Mesne profits.** See Ejectment.
- Mining**, measure on failure of diligence in exercising privilege of. **Palmer Brick Co.**, 138/289, 75 S. E. 480.
- Minor's settlement of**, with employer, when not binding. **Southern Cotton Oil Co.**, 121/787, 49 S. E. 788.
- Suit for injury; measure. **Atlanta &c. Ry. Co.**, 122/82, 49 S. E. 818.
- See catchword "Child," supra.
- Misjoinder of causes ex contractu and ex delicto.** **L. & N. R. Co.**, 129/234, 58 S. E. 706.
- Mitigation**, absence of aggravation and of bad faith goes in. **McPherson**, 137/131, 72 S. E. 948.
- Absence of malice as. **Cox**, 101/483, 28 S. E. 655; **Holmes**, 121/241, 48 S. E. 934, 104 Am. St. R. 103.
- Abusive language and opprobrious words go in, of assault and battery. **Berkner**, 116/954, 43 S. E. 463, 60 L. R. A. 559; **Thompson**, 131/714, 63 S. E. 220; **Beckworth**, 6 A. 859, 65 S. E. 1075; **Garrett**, 7 A. 744, 67 S. E. 1049.
- Allegation of means of lessening damage, competent. **Atlantic R. Co.**, 127/806, 56 S. E. 1006, 9 L. R. A. (N. S.) 969, 9 Ann. Cas. 553.
- By benefits to property. **Jones**, 6 A. 515, 65 S. E. 361.
- Circumstances of mitigation, irrelevant in condemnation proceeding. **Atlanta Terra Cotta Co.**, 132/537, 64 S. E. 563.
- Evidence admissible, of reasonable suspicion of guilt. **Rogers**, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64, Ann. Cas. 1914A, 1017.
- Good faith and ignorance as. **Vanner**, 3 A. 415, 60 S. E. 216.
- Gratuity received does not go in. **Nashville &c. Ry.**, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. Cas. 210.
- In libel and slander. **Western Union Tel. Co.**, 108/413, 34 S. E. 216; **Holmes**, 121/241, 48 S. E. 934, 104 Am. St. R. 103; (character of plaintiff) **Redfearn**, 10 A. 550, 73 S. E. 949; (general belief and report) **Bennett**, 1 A. 476, 58 S. E. 104.
- In malicious prosecution. **Branch**, 135/110, 68 S. E. 1021.
- Misconduct provoking cause of injury. **Mason**, 135/741, 70 S. E. 225, 33 L. R. A. (N. S.) 280.
- Of recovery on conversion of pledge. **Citizens Bank**, 132/772, 65 S. E. 81.
- See catchwords "Diminution," "Lessen," supra.
- Mortality tables.** See catchwords "Life," supra, "Tables," infra.
- Mortgage**, for wrongful exercise of power of sale in. **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167.
- Mortification.** See catchwords "Feelings," "Insult," "Mental," supra.
- Mule vicious**; scienter essential to liability. **Harvey**, 121/384, 49 S. E. 281.
- Mutual fault.** See catchword "Apportionment," supra; **Negligence**, catchword "Contributory."
- National bank not liable for tort of its officers.** **Hansford**, 10 A. 270, 73 S. E. 405.

Natural beauties of property, no element for recovery for destroying. *Elbert County*, 2 A. 47, 58 S. E. 396.

Negotiable paper, for wrongful transfer of. *Detwiler*, 119/981, 47 S. E. 553.

New trial confined to assessment of. *Snowden*, 110/99, 35 S. E. 309.

Noise, smoke, dust, cinders; limited purpose of consideration. *Atlantic &c. Ry. Co.*, 125/329, and cit., 334, 54 S. E. 148.

See catchword "Annoyance," supra.

Nominal; action maintainable without proof of special damage (contract breach). *L. & N. R. Co.*, 132/173, 63 S. E. 898; (property right invaded) *Price*, 132/247, 64 S. E. 87, 22 A. L. R. (N. S.) 684; (trespass) *Miller*, 132/581, 64 S. E. 658.

Action not dismissed, if nominal damages recoverable. *Graham*, 120/757, 49 S. E. 75.

Action retained on demurrer, though elements sued for not recoverable. *Sutton*, 101/776, 29 S. E. 53; *Roberts*, 112/458, 37 S. E. 704.

Amounts treated as nominal. (\$250) *Western Union Tel. Co.*, 8 A. 168, 68 S. E. 881; (\$150) *Atkinson*, 11 A. 463, 75 S. E. 676; *A. C. L. R. Co.*, 14 A. 174, 80 S. E. 516; (\$100) *Mayor &c. of Americus*, 14 A. 708, 82 S. E. 159.

Amounts not so treated (\$200) *Southern Ry. Co.*, 10 A. 526, 73 S. E. 703; (\$400) *A. C. L. R. Co.*, 11 A. 520, 75 S. E. 841; (\$550) *Copeland*, 18 A. 196, 89 S. E. 188; (\$1,000) *W. & A. R. Co.*, 21 A. 50, 93 S. E. 547; (\$1 not sufficient) *Travers*, 19 A. 15, 90 S. E. 732; (\$5 carried costs in case of negligence) *Saunders*, 20 A. 292, 93 S. E. 103.

Arrest on false charges; case for nominal and temperate damages. *Stevens*, 18 A. 483, 89 S. E. 597.

Assault and battery. *Ingram*, 4 A. 242, 61 S. E. 134; *Copeland*, 18 A. 196, 89 S. E. 188.

Breach of contract. *Cochran*, 123/190, 51 S. E. 285; *Richmond Hosiery Mills*, 123/216, 51 S. E. 290; *Anderson*, 18 A. 479, 89 S. E. 631.

Breach of contract by carrier. *Williams*, 4 A. 370, 61 S. E. 495.

Breach of contract; case not for nominal damages. *Hardwood Lumber Co.*, 134/827, 68 S. E. 725, 32 L. R. A. (N. S.) 192.

Breach of contract; finding too much. *Milledgeville Water Co.*, 129/111, 58 S. E. 643.

Breach of contract implied from public duty. *Glenn*, 1 A. 821, 58 S. E. 83.

Breach of contract; pleading not sufficient to cover. *Florence Wagon Works*, 8 A. 197, 202, 68 S. E. 866.

Breach of public duty; prayer for nominal damages. *Cole*, 23 A. 479, 98 S. E. 407.

Breach of warranty; no proof of amount of price. *Taylor*, 131/420, 62 S. E. 291.

Condemnation of land; evidence showing no more than nominal. *Georgia R. &c. Co.*, 129/505, 59 S. E. 217.

Condemnation of land, irrelevant on. *Atlanta Terra Cotta Co.*, 132/538, 64 S. E. 563.

Defined. Verdict unlawful, if no amount stated. *Sellers*, 113/643, 39 S. E. 11.

Defined. *Batson*, 7 A. 838, 68 S. E. 455; *A. C. L. R. Co.*, 14 A. 174, 80 S. E. 516.

Delay by carrier of message. *Trigg*, 4 A. 416, 61 S. E. 855.

Eviction; \$400 held excessive. *Copeland*, 21 A. 485, 94 S. E. 633.

Evidence authorized submitting issue. *Conant*, 120/568, 48 S. E. 234.

Evidence required submitting issue. *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103.

False charge causing arrest. *Stevens*, 18 A. 483, 89 S. E. 597.

Finding insufficient; actual damages required. *Nuckolls*, 120/677, 48 S. E. 191; (substantial sum demanded by evidence) *Cochran*, 143/35, 84 S. E. 127, Ann. Cas. 1915B, 450.

Instructions to jury considered. *Southern Ry. Co.*, 14 A. 312, 80 S. E. 697; *A. C. L. R. Co.*, 14 A. 620, 82 S. E. 299.

Nominal—(Continued).

Invasion of property right. **Swift**, 115/885, 42 S. E. 277, 58 L. R. A. 390.

Killing cow, not involved in action for. **Wakefield**, 18 A. 648, 90 S. E. 224.

Killing dog, case for. **Prickett**, 18 A. 676, 90 S. E. 287.

Negligence to railroad passenger. **Williamson**, 127/126, 56 S. E. 119; **Sappington**, 127/179, 56 S. E. 311; **W. & A. R. Co.**, 21 A. 50, 93 S. E. 547.

New trial not ordered for mere recovery of. **Sutton**, 101/776, 29 S. E. 53; **Fulghum**, 121/273, 43 S. E. 901; **Edwards**, 129/304, 58 S. E. 817; **Adams**, 141/419, 81 S. E. 203; **Williams**, 12 A. 78, 76 S. E. 757.

Not allowed; pleading comprehended only actual and punitive. **Haber**, 118/874, 45 S. E. 696.

Not recoverable under allegations. **Adams**, 18 A. 367, 89 S. E. 441.

Not recovered for negligence, where only actual and punitive damages were claimed. **Jones**, 19 A. 242, 91 S. E. 265.

Not recovered where only special damages sued for. **Hadden**, 135/372, 69 S. E. 480; **Green**, 138/571, 75 S. E. 670; **Christopoulos Co.**, 4 A. 819, 62 S. E. 562; **Sparks Milling Co.**, 9 A. 728, 72 S. E. 179.

Not recoverable on breach of contract. **Twin City Lumber Co.**, 22 A. 587, 96 S. E. 437; **Prince**, 23 A. 660, 99 S. E. 132.

Passenger discharged at wrong place. **Southern Ry. Co.**, 10 A. 523, 73 S. E. 703.

Pleading did not authorize recovery. **Twin City Lumber Co.**, 22 A. 587, 96 S. E. 437; **Prince**, 23 A. 660, 99 S. E. 132.

Recoverable where no proof of special damages. **Ford**, 8 A. 296, 68 S. E. 1072.

Recovery not reduced by, as recoupment. **Foote & Davies Co.**, 115/985, 42 S. E. 413.

Right to, defeats general demurrer. **Varner**, 3 A. 415, 60 S. E. 216; **Gurr**, 8 A. 556, 69 S. E. 1085.

Nominal—(Continued).

Right to, prevents nonsuit. **Berkner**, 116/954, 43 S. E. 463, 60 L. R. A. 559; **Croom**, 145/347, 89 S. E. 199.

Trespass; nominal, where no special damage proved. **Postal Tel. Co.**, 127/20, 55 S. E. 967.

Trover for paid note. **Long**, 129/660, 59 S. E. 779, 16 L. R. A. (N. S.) 1043, 12 Ann. Cas. 263.

Verdict not held inadequate. **Farley**, 105/323, 31 S. E. 193.

See catchword "General," supra.

Note unlawfully procured and transferred; measure of recovery against payee by maker subjected to liability. **Tygart**, 8 A. 20, 68 S. E. 488; **Kitchens**, 8 A. 587, 69 S. E. 1086.

Wrongful transfer of; measure of recovery. **Patterson**, 15 A. 680, 84 S. E. 163.

Notice as condition of exercising right to fix, by resale. **United Roofing Co.**, 18 A. 89 S. E. 177.

At time of contract, of damage that will result from breach, when essential to recovery. **Twin City Lumber Co.**, 22 A. 578, 96 S. E. 437.

Of claim, as condition precedent to suit for damages. **Arnold**, 4 A. 519, 61 S. E. 1050; (substantial compliance) **Smith**, 5 A. 286, 63 S. E. 48; **Kennedy**, 8 A. 98, 68 S. E. 652; (reasonable stipulation; notice too indefinite) **Postal Tel. Co.**, 5 A. 503, 63 S. E. 590; (to carrier; inapplicability of contract stipulation) **Southern Ry. Co.**, 132/853, 65 S. E. 93; (carriage of live stock) **L. & N. R. Co.**, 6 A. 550, 65 S. E. 308; (to municipality; immaterial misdescription) **City of Rome**, 135/504, 69 S. E. 707; (provable by admission in plea) **Wilson**, 11 A. 817, 76 S. E. 648; (sufficiently full and definite) **City of Rome**, 12 A. 757, 78 S. E. 475; (not timely) **Sparks**, 15 A. 80, 82 S. E. 583; **Elbert County**, 15 A. 197, 82 S. E. 808; (specification of amount of money not essential) **Maryon**, 149/35, 99 S. E. 116; 23 A. 716, 99 S. E. 316.

Of probable result of omission of duty by telegraph carrier. **Walden**, 105/277, 31 S. E. 172.

See Carriers; Counties; Municipal Corporations; Railroads; Telegraphs and Telephones.

Nuisance continuing; measure of liability; limitation of action. *Gabbett*, 137/180, 73 S. E. 372.

Creating and maintaining, distinct. *Williams*, 140/714, 79 S. E. 850.

Elements and measure of recovery. *Swift*, 115/885, 42 S. E. 277, 58 L. R. A. 390; *Mulligan*, 115/377, 41 S. E. 604; *Savannah &c. Ry. Co.*, 117/893, 45 S. E. 280; *Langley*, 118/591, 45 S. E. 486, 98 Am. St. R. 133; *City Council of Augusta*, 124/365, 52 S. E. 539; *A. C. L. R. Co.*, 139/422, 77 S. E. 568; (fertilizer works) *Jones*, 6 A. 506, 65 S. E. 361; (stagnant water) *Towaliga Falls Power Co.*, 6 A. 749, 65 S. E. 844; see 19 A. 347, 91 S. E. 442; (drain-pipe; rent reduced). *Carstarphen*, 8 A. 164, 68 S. E. 848.

Equitable relief denied. *Central of Ga. Ry. Co.*, 133/392, 65 S. E. 855.

Equitable relief may be granted. *Holman*, 149/345, 100 S. E. 207.

Extent of recovery; second recovery. *Farley*, 105/329, 31 S. E. 193.

Guano and chemicals, to adjacent property from storage of. *Lively*, 130/106, 60 S. E. 264.

Home injured by fertilizer factory; measure. *Jones*, 6 A. 506, 65 S. E. 361.

Irreparable in damages; causing injury to health. *Manning*, 136/881, 72 S. E. 401.

Joint liability of defendants for maintaining. *Nalley*, 135/835, 70 S. E. 788; cf. *Key*, 18 A. 472, 89 S. E. 593.

Limitation of action. *Southern Ry. Co.*, 119/234, 46 S. E. 85; *Godfrey*, 21 A. 387, 94 S. E. 604.

Lawful structure maintained as. *Long*, 109/28, 34 S. E. 333, 46 L. R. A. 428, 77 Am. St. R. 363.

Presumed to flow from, damages are not. *Central Ga. Power Co.*, 143/466, 85 S. E. 344, L. R. A. 1915E, 430.

Railroad operation in town; no cause of action shown. *DeLoach*, 137/633, 73 S. E. 1072.

Recovery for injury to health; though works be lawful. *Central Ga. Power Co.*, 143/777, 85 S. E. 945.

Recovery up to time of suit only, for continuing nuisance. *Ketron*, 130/541, 61 S. E. 113.

Special damages from public work gives right of action. *Richmond Cotton Oil Co.*, 134/472, 67 S. E. 1126. See *Sammons*, 145/663, 89 S. E. 774.

Water ponded in lawful works; elements and measure of recovery. *Central Ga. Power Co.*, 141/173, 186, 191, 80 S. E. 636, 642, 645; *Towaliga Falls Co.*, 6 A. 750, 65 S. E. 844; *City of Rome*, 12 A. 756, 78 S. E. 475.

Water supply defiled; recovery. *Pratt Eng. Co.*, 142/401, 83 S. E. 107.
See Nuisances.

Obstruction of view, when no element for recovery. Different effect of obstruction of water. *L. & N. R. Co.*, 139/544, 77 S. E. 796.

Offer to adjust, does not concede liability. *Cook*, 23 A. 284, 98 S. E. 92.

Officer's breach of duty; pecuniary loss essential to recovery. *Beck & Gregg Co.*, 121/291, 48 S. E. 930, 3 L. R. A. (N. S.) 420, 2 Ann. C. 9; (measure of damages) *Terrell*, 130/633, 61 S. E. 485.

Opinion admissible; of expert, on condition of mind. *Central of Ga. Ry. Co.*, 118/143, 44 S. E. 975.

As basis of estimate, admissible (value of property) *Central Ga. Power Co.*, 139/416, 77 S. E. 565; (not admissible; probable sales) *American Ag. Chem. Co.*, 139/496, 77 S. E. 582; (not admissible: amount) *Mayor &c. of Macon*, 115/153, 156, 41 S. E. 499; *Foote & Davies Co.*, 115/985, 42 S. E. 413; *McCrory*, 119/876, 47 S. E. 341; (not admissible; profits of business) *Copeland*, 21 A. 486, 94 S. E. 633.

As to extent of injury, given by physician, admissible. *Seaboard Air-Line Ry.*, 131/799, 63 S. E. 344.

As to fairness and correctness of amount claimed as damages, not admissible. *Butler*, 144/553, 87 S. E. 771.

By plaintiff, that his injury is permanent, not admissible. *Central of Ga. Ry. Co.*, 118/145, 44 S. E. 975.

Deducible by jury, as basis of reasonably accurate estimate, from facts and circumstances. *Moss*, 144/173, 86 S. E. 550.

Opinions, though uncontradicted and uniform, do not bind jury. *McCarthy*, 137/282, 73 S. E. 493; *Graham*, 137/668, 74 S. E. 426; *Southern Ry. Co.*, 139/362, 77 S. E. 44; (if damages be unliquidated) *Bailey*, 147/450, 94 S. E. 554.

See catchword "Value," infra.

Other injuries than that on trial; admissibility of evidence. *Southern Ry. Co.*, 125/361, 54 S. E. 151.

Overflow of land by surface-water; measure of damages. *Farkas*, 103/150, 68 Am. St. R. 88.

Recovery for loss of crops. *Southern Ry. Co.*, 131/21, 61 S. E. 913.

Recovery denied. *Georgia Ry. & Co.*, 20 A. 780, 93 S. E. 521.

See catchword "Water," infra.

Pain, action for, survives to administrator, not spouse. *Stephens*, 134/818, 68 S. E. 551.

Additional sum for; erroneous instruction was not harmful. *Macon & Co.*, 129/683, 59 S. E. 902.

Aggravation of existing infirmity, recovery for. *City of Atlanta*, 139/390, 77 S. E. 393.

Amount not held excessive, save in extreme case. *Central of Ga. Ry. Co.*, 14 A. 273, 80 S. E. 688.

Capacity to labor, impairment or loss of, as basis of recovery for pain. *City Council*, 111/479, 36 S. E. 830; *Central of Ga. Ry. Co.*, 118/833, 836, 45 S. E. 680; *Southern Ry. Co.*, 136/591, 71 S. E. 802; *City of Atlanta*, 139/390, 77 S. E. 393; *W. & A. R. Co.*, 139/493, 77 S. E. 576; *Central of Ga. Ry. Co.*, 145/656, 89 S. E. 760; *Merchants & Co. Trans. Co.*, 4 A. 670, 62 S. E. 130; *Atkinson*, 13 A. 100, 78 S. E. 830; (recovery by married woman) *Wrightsville & Co. R. Co.*, 9 A. 372, 71 S. E. 691.

Conscience of jury measures recovery for pain. *Linder*, 137/353, 73 S. E. 734.

Continued pain, amendment alleging. *Central of Ga. Ry. Co.*, 112/244, 37 S. E. 365.

Mental and physical pain, conscience of jurors measures. *L. & N. R. Co.*, 142/720, 771, 83 S. E. 681, 792; *Mayor & Co. of Savannah*, 13 A. 61, 78 S. E. 779.

Delay in duty, no cause to recover for mental and physical suffering. *Seifert*, 129/181, 59 S. E. 699, 11 L. R. A. (N. S.) 1149, 121 Am. St. R. 210.

Evidence of complaints. *Atlanta & Ry. Co.*, 122/83, 99, 49 S. E. 818; *Western & Co. R. Co.*, 123/31, 50 S. E. 984.

Evidence raised issue for jury. *Elk Cotton Mills*, 140/727, 79 S. E. 836, 48 L. R. A. (N. S.) 656. Authorized charge. *Georgia Ry. & Co.*, 20 A. 454, 464, 93 S. E. 62.

Federal employer's liability law, recovery under. *A. C. L. R. Co.*, 21 A. 704, 706, 94 S. E. 909.

Future pain considered. *Southern Ry. Co.*, 125/354, 54 S. E. 113; *Southern Cotton Oil Co.*, 125/369, 54 S. E. 110.

Future pain; issue not raised. *Peterson*, 117/390, 43 S. E. 713. Issue raised. *Southern Ry. Co.*, 125/354, 54 S. E. 113; *Southern Cotton Co.*, 125/369, 54 S. E. 110.

Future pain, in case of permanent injury; measure. *Southern Ry. Co.*, 6 A. 173, 64 S. E. 703.

Future pain; rule as to allowance. *Shore*, 142/657, 83 S. E. 518.

Inadequate recovery (\$100). *Anglin*, 128/469, 57 S. E. 780.

Inferred from nature of wound. *Harp*, 19 A. 794, 92 S. E. 286.

Instructions to jury as to measure of damages. *Goodwyn*, 2 A. 471, 58 S. E. 688; *City of Cedartown*, 2 A. 589, 59 S. E. 836.

Instruction inaccurate, held not harmful. *Southern Ry. Co.*, 146/200, 91 S. E. 46.

Mental and physical pain; compensation measured by conscience of jury; no fixed rule. *Southern Ry. Co.*, 114/183, 39 S. E. 883; *Savannah &c. Ry. Co.*, 114/762, 40 S. E. 699; *W. & A. R. Co.*, 123/32, 50 S. E. 984; *Betts Co.*, 139/199, 77 S. E. 77. From improper exercise of right; recovery. *Samples*, 143/805, 85 S. E. 1002.

From nervous shock produced by witnessing homicide of child, no element. *Southern Ry. Co.*, 146/243, 91 S. E. 28.

Mental pain alone, no basis for recovery. *Martin*, 18 A. 226, 228, 89 S. E. 495.

Passengers misled as to trains by carrier's servants. *Atkinson*, 11 A. 463, 75 S. E. 676; *Southern Ry. Co.*, 11 A. 603, 75 S. E. 925. Cf. *A. C. L. R. Co.*, 11 A. 520, 75 S. E. 841.

Past, present, and future pain; recovery measured by conscience of jury. *Central of Ga. Ry. Co.*, 15 A. 16, 82 S. E. 600; *Lamb*, 15 A. 533, 83 S. E. 796; *Mayor &c. of Americus*, 15 A. 805, 84 S. E. 144.

Permanency, inference as to. *Southern Ry. Co.*, 7 A. 659, 67 S. E. 886.

Prospective pain, reduction of finding for, to present value. *City of Atlanta*, 139/390, 77 S. E. 393.

Recovery not dependent on right to recover for amputation. *Moon*, 111/206, 36 S. E. 635.

Rule as to estimating damages. *Pace*, 144/262, 86 S. E. 934; *Central of Ga. Ry. Co.*, 10 A. 484, 73 S. E. 702.

Suffered by wife, husband cannot recover for. *Hadden*, 135/372, 69 S. E. 480.

With loss of limb; recovery. *Savannah &c. Ry. Co.*, 104/655, 30 S. E. 378, 69 Am. St. R. 187.

With permanent injury and total disability; recovery. *Central of Ga. Ry. Co.*, 118/833, 45 S. E. 680.

See catchwords "Mental anguish," *supra*; *Evidence*.

Parent's right, for invasion of, by abducting child. *Selman*, 4 A. 375, 61 S. E. 501. See catchword "Child," *supra*; *Parent and Child*.

Partnership, non-liability of, for tort of partner. *Corbett*, 11 A. 385, 75 S. E. 492; *Battle*, 14 A. 56, 80 S. E. 297.

Cannot recover, for tort against partner. *Copeland*, 18 A. 196, 89 S. E. 188.

See catchword "Joint," *supra*.

Party to action; intervention as defendant, when not allowed. *Armour Car Lines*, 5 A. 619, 63 S. E. 667.

See catchword "Action," *supra*.

Passenger ejected on refusal to pay fare, because not seated, could not recover. *Rossman*, 146/264, 91 S. E. 90, L. R. A. 1917C, 483.

Expelled from train, without legal injury, cannot recover damages. *Foskey*, 19 A. 670, 92 S. E. 34.

See *Railroads*, catchword "Passenger."

Payment refused; legal interest the measure. *Atlanta Elevator Co.*, 106/430, 32 S. E. 541.

Peace, happiness, and feelings. Code provision inapplicable if injury not solely thereto. *Wadley*, 138/276, 75 S. E. 153.

Injury to, is personal tort; injury to property is not entirely to. *Stovall*, 139/244, 77 S. E. 29.

Rule inapplicable to contract breach. *L. & N. R. Co.*, 104/692, 30 S. E. 968; *Southern Ry. Co.*, 105/316, 31 S. E. 182.

Peculiar advantages and benefits not considered in assessing. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

Penalty, additional damages to deter repetition of trespass are in nature of. *McConnell*, 134/105, 67 S. E. 440.

Deduction from price for delay, not so held. *Mayor &c. of Washington*, 132/849, 65 S. E. 80.

Distinguished from damages. *Southern Ry. Co.*, 11 A. 566, 75 S. E. 908.

Not recovered as liquidated damages. *Abrams*, 9 A. 699, 72 S. E. 64.

Stipulated, recoverable on breach of bond to comply with penal law. *City of Albany*, 11 A. 746, 75 S. E. 105.

Stipulation for, prima facie, rather than liquidated damages. *Florence Wagon Works*, 8 A. 197, 68 S. E. 866.

See catchword "Bonds," "Forfeiture," "Interest," "Liquidated," supra; "Punitive," infra; **Bonds; Contracts.**

Perishable property, loss of. See catchword "Delay," supra.

Permanent and temporary, including rent loss, not three distinct elements. *L. & N. R. Co.*, 143/208, 84 S. E. 451.

Evidence authorizing submission of issue. *Simmons*, 21 A. 686, 94 S. E. 907; *Georgia R. &c. Co.*, 20 A. 464, 93 S. E. 62.

Inferred from character of injury. *Macon Ry. &c. Co.*, 123/279, 51 S. E. 342; *Southern Ry. Co.*, 125/354, 54 S. E. 113; *Southern Ry. Co.*, 7 A. 659, 67 S. E. 886.

Injury permanent, error in assuming, on conflicting evidence. *W. & A. R. Co.*, 142/801, 83 S. E. 943.

Instruction to jury. *City of Cedar-town*, 2 A. 589, 59 S. E. 836.

Measure of recovery. *Georgia Ry. &c. Co.*, 143/94, 84 S. E. 434; *L. & N. R. Co.*, 145/521, 89 S. E. 620.

Not considered if not claimed. *Southern Ry. Co.*, 120/465, 47 S. E. 901.

Presumption of continuance of condition; burden of proof. *Wilkins*, 19 A. 162, 165, 91 S. E. 224.

Proof sufficient. *Sufficient Ry. Co.*, 124/958, 53 S. E. 461.

Recovery not entirely excluded because injury was not permanent. *Pickett*, 138/177, 74 S. E. 1027, Ann. Cas. 1913C, 1380.

To realty (by nuisance). *Central Ga. Power Co.*, 141/173, 186, 191, 80 S. E. 636, 642, 645; (one action comprehends all recovery) *Ketron*, 130/541, 61 S. E. 113.

Person, property, or reputation, no recovery without injury to. *Georgia Ry. &c. Co.*, 1 A. 833, 838, and cit., 58 S. E. 88.

Personal covenants, when no recovery on breach of, where sale contract merged into deed or bond. *Chamlee*, 145/637, 89 S. E. 719.

Physical examination of plaintiff. See catchword "Examination," supra.

Physical injuries; elements and evidence. *Atlanta &c. R. Co.*, 133/231, 65 S. E.

437; *Georgia R. &c. Co.*, 133/621, 66 S. E. 944.

Physician's liability in, for malpractice or want of skill. *Edwards*, 12 A. 140, 76 S. E. 1054; *Hinkle*, 12 A. 496, 77 S. E. 650.

Pleading. Ad damnum clause no averment of particular injury. *Watters*, 120/426, 47 S. E. 911; *Beck & Gregg Co.*, 121/290, 48 S. E. 930, 3 L. R. A. (N. S.) 430, 2 Ann. C. 9.

Computation, manner of, unnecessary. *Freeman*, 126/843, 848, 56 S. E. 61, 7 L. (N.) 917.

Definite allegation of injuries. *Douglas &c. R. Co.*, 2 A. 554, 59 S. E. 600.

Demurrers general and special, allegation considered on. *Central Ga. Power Co.*, 141/173, 186, 191, 196, 80 S. E. 636, 642, 645, 648.

Demurrer to elements or measure must be special, not merely general. *Payton*, 4 A. 762, 62 S. E. 469.

Duplicitous; complaint on account, indicating purpose to recover damages ex contractu. *Pitts*, 108/37, 33 S. E. 814.

Indefinite and uncertain allegations demurrable as too general, and no basis of recovery. *White*, 112/775, 38 S. E. 80; *Clark*, 112/777, 38 S. E. 81; *Brown*, 119/153, 46 S. E. 410; *L. & N. R. Co.*, 371, 46 S. E. 429; *McCrary*, 119/876, 47 S. E. 341; *Wald-rup*, 127/359, 56 S. E. 439; *Harrell*, 14 A. 451, 81 S. E. 384; *L. & N. R. Co.*, 143/414, 85 S. E. 341; (amendable) *Cagle*, 1 A. 192, 57 S. E. 946; *Hearn*, 1 A. 265, 57 S. E. 916.

Itemized statement required on demurrer. *McKenzie*, 123/72, 51 S. E. 34; (effect of treating item as in issue) *Snowden*, 105/384, 31 S. E. 110; (extent of statement) *L. & N. R. Co.*, 131/792, 63 S. E. 501.

Justice's court, sufficient allegations in. *South Ga. Ry. Co.*, 13 A. 416, 79 S. E. 226.

Prayer in alternative raises issue, if no special demurrer. *Roby*, 121/679, 49 S. E. 694, 68 L. R. A. 601.

- Special allegation required, to recover attorney's fees. **Lampkin**, 122/407, 50 S. E. 171.
- Special damages; allegations of fact. **Montgomery**, 140/51, 78 S. E. 413. Need of alleging. See catchword "Special," *infra*.
- Specific, when unnecessary under petition taken as a whole. **Burton**, 126/805, 55 S. E. 933.
- Sufficient on demurrer. **Southern Pine Co.**, 113/629, 38 S. E. 960.
- Value of personalty; allegation of measure. **Central of Ga. Ry. Co.**, 14 A. 740, 82 S. E. 310.
- Words treated as surplusage. **Jacobus**, 107/523, 33 S. E. 853, 73 Am. St. R. 141.
- See catchwords "Justice's Court," *supra*; "Recoupment," "Set-off," *infra*; **Pleading**.
- Poison**. See catchword "Beverage," *supra*.
- Pollution** of stream. See catchword "Nuisance," *supra*; "Waters," *infra*; **Waters**.
- Possession**, for interfering with. **Downing**, 126/374, 55 S. E. 184.
- Of land, as basis to recover. **Southern Ry. Co.**, 121/386, 49 S. E. 285; **Brown Store Co.**, 121/809, 49 S. E. 839; (need to show extent of interest in land) **Cogan**, 18 A. 421, 89 S. E. 491.
- Prayer** for damages; omission amendable, cured by verdict. **Fitzpatrick**, 131/693, 63 S. E. 213.
- For general relief, when no damages recoverable under. **Rosenkrantz**, 147/730, 732, 95 S. E. 225.
- Prepayment** of compensation for injury to private property by public improvement, not required if none of it be taken. **Fleming**, 130/383, 61 S. E. 5; **Nelson**, 138/256, 75 S. E. 245. See **Golightly**, 148/20, 95 S. E. 683.
- Present value** of future payment; ascertainment. **Savannah Electric Co.**, 124/668, 53 S. E. 109.
- Presentation** of claim for, against county. **Adkins**, 135/679, 70 S. E. 335; **Nalley**, 135/835, 70 S. E. 788.
- Against municipality; proof necessary. **Bostwick**, 141/120, 80 S. E. 657; **Marks**, 145/399, 89 S. E. 324.
- To carrier, as to live stock injured in shipment, when necessary. **Kent**, 144/7, 85 S. E. 1017.
- See catchword "Notice," *supra*.
- Privacy**, for violating right of. **Pavesich**, 122/190, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. R. 104, 2 Ann. C. 561.
- Private property** damaged, none taken, by public improvement, no cause for injunction. **Silvey**, 137/468, 73 S. E. 629; **Golightly**, 148/20, 95 S. E. 683.
- Depreciated by erection of public work; measure. **City of Newman**, 145/380, 89 S. E. 336.
- Taken or damaged for public use; adequate compensation. **Elbert County**, 16 A. 835, 86 S. E. 651.
- Privilege lost; value as measure. **Brantley Co.**, 104/850, 29 S. E. 486.
- Privity of contract; when unnecessary for recovery. **Woodward**, 119/618, 46 S. E. 847, 64 L. R. A. 932, 100 Am. St. R. 188.
- Profit-sharing**; no legal measure shown. **Georgia Cane Co.**, 141/40, 80 S. E. 318.
- Profits** and commissions recoverable. **Walden**, 105/275, 31 S. E. 172.
- Anticipated from expected contract, not recoverable. **Bashinsky**, 1 A. 761, 58 S. E. 91.
- Anticipated from resale of goods not delivered, not recoverable. **Smalls**, 14 A. 84, 80 S. E. 339; see **Shaw**, 14 A. 303, 80 S. E. 735.
- Anticipated from resale of goods, right to recover. **Carolina Cement Co.**, 3 A. 483, 60 S. E. 279.
- Anticipated from resales of land; action premature. **Blackwell**, 132/845 65 S. E. 84.
- Anticipated from subrental, not allowed. **McNaughton**, 8 A. 545, 70 S. E. 61.
- Anticipated from threshing grain, not recoverable. **Hall**, 11 A. 840, 76 S. E. 597.
- Anticipated, plea not sufficient to recover. **Ney**, 5 A. 325, 63 S. E. 143.
- Anticipated; what not recoverable. **Silver**, 107/280, 33 S. E. 31.
- Anticipated, when too remote or contingent. **Findlay Brick Co.**, 18 A. 446.

89 S. E. 535; **Shaw**, 18 A. 538, 89 S. E. 1054.

Contingent, impossible of estimate. **Huxford**, 124/186, 52 S. E. 439.

Expected, not recovered as such; evidence considered. **Camp**, 112/881, 38 S. E. 71, 52 L. R. A. 755.

Future profits, error in finding, against trustee ex maleficio. **Augusta Naval Stores Co.**, 133/138, 65 S. E. 370.

Lost, as an element of damages on breach of contract. **Partin**, 17 A. 834, 88 S. E. 745.

Lost by delay of telegram, recoverable. **Propeller Co.**, 124/478, 52 S. E. 766.

Lost by mistake in telegram, not recovered. **Bass**, 127/423, 56 S. E. 465, 12 L. R. A. (N. S.) 489.

Lost; evidence admissible. **Brunswick &c. R. Co.**, 112/608, 37 S. E. 888, 52 L. R. A. 396.

Lost, not recovered as such. **Bass**, 110/703, 36 S. E. 244.

Lost, not shown by proving profits in next year. **Florida Northern R. Co.**, 112/1, 37 S. E. 130.

Lost, of business on rented premises; evidence admissible. **Hayes**, 1 A. 26, 57 S. E. 1087.

Lost, on undelivered goods, not provable. **Southern Express Co.**, 134/446, 67 S. E. 944, 137, Am. St. R. 237.

Lost, on undelivered goods, recovery. **Robson**, 12 A. 781, 78 S. E. 610.

Lost; recovery on breach of contract. **Virginia Bridge &c. Co.**, 2 A. 133, 58 S. E. 322.

Lost; recovery where directly derivable from contract in suit; not from other collateral contract. **American Ag. Chem. Co.**, 139/496, 77 S. E. 582; **Montgomery**, 140/51, 78 S. E. 413.

Lost; testimony was not admissible to illustrate. **Price**, 132/246, 64 S. E. 87 22 L. R. (N. S.) 684.

Lost; too remote for recovery. **Cooper**, 132/535, 64 S. E. 650; (when not so) **Gore**, 110/902, 36 S. E. 315.

Lost; too uncertain for recovery. **Piedmont Wagon Co.**, 4 A. 393, 61 S.

E. 835; **Albany Phosphate Co.**, 4 A. 773, 62 S. E. 533.

Lost; uncertain and indefinite contract no basis to recover. **Prior**, 141/117, 80 S. E. 559.

Lost, with rentals, when no basis of recovery. **Central Ga. Power Co.**, 141/173, 80 S. E. 636.

Probable, too remote and speculative. **Harris**, 112/95, 37 S. E. 123.

Prospective, admissibility of testimony as to. **Copeland**, 21 A. 486, 94 S. E. 633.

Prospective, as element for recovery. **Hirsch**, 8 A. 284, 68 S. E. 1076; **Chappell**, 8 A. 787, 70 S. E. 208.

Prospective, from collateral contract not contemplated, not recovered. **Goodin**, 125/630, 54 S. E. 720, 6 L. R. A. (N. S.) 1054, 5 Ann. C. 573.

Prospective, from crop planted but not completed, not recovered. **Sheppard**, 19 A. 679, 92 S. E. 39.

Prospective; jack's service fees, when recoverable. **Bateman**, 12 A. 259, 77 S. E. 104.

Prospective, on sales, when too remote. **Seaboard Air-Line Ry.**, 121/707, 49 S. E. 703.

Prospective; recoverable, if ascertainable. **Jester**, 4 A. 469, 61 S. E. 926.

Prospective, recoverable, if immediate fruit of contract. **Tygart**, 5 A. 412, 63 S. E. 521; **Central of Ga. Ry. Co.**, 14 A. 740, 82 S. E. 310.

Prospective, too vague and contingent, from possible sale of timber. **Beasley**, 17 A. 615, 87 S. E. 907.

Prospective; what recoverable. **Anderson**, 121/688, 49 S. E. 725. Rule that current profits of going concern are too uncertain. **Consolidated Phosphate Co.**, 20 A. 474, 93 S. E. 155.

Remote and speculative, no recovery. **Thornton**, 8 A. 588, 70 S. E. 17; **Findlay Brick Co.**, 18 A. 446, 89 S. E. 535; **Shaw**, 18 A. 528, 89 S. E. 1054.

See catchwords "Earnings," supra; "Remote," infra.

Prospective injuries from abatable nuisance, when no recovery for. **Mayor &c. of Gainesville**, 22 A. 490, 96 S. E.

328. See *Smith*, 22 A. 572, 96 S. E. 570.

Proof affirmative, required. *Clarke*, 112/633, 37 S. E. 870; *Carter*, 119/474, 46 S. E. 658. See catchword "Amount," *supra*.

Need of proof where case in default. *Maryland Casualty Co.*, 124/859, 53 S. E. 395; and see catchwords "Justice's Court," *supra*; "Unliquidated," *infra*.

Of injuries not specifically described in pleading, admissible. *Atlanta Ry. & Co.*, 117/181, 43 S. E. 425.

Property, "damage" to, by destroying it. *Seaboard Air-Line Ry.*, 3 A. 644, 60 S. E. 353.

For public use, and burdened with added use; difference in assessment. *Atlantic & C. R. Co.*, 120/280, 48 S. E. 215, 1 Ann. Cas. 734.

Injury to market value, by noise, smoke, cinders, and vibrations; recovery denied (two JJ., dissenting). *Austin*, 108/671, 34 S. E. 852, 47 L. R. A. 755.

Not taken, evidence not showing prospective damage, no injunction. *Brown*, 113/476, 39 S. E. 71; and see catchword "Private," *supra*.

Rights not invaded by public work; no recovery. *Austin*, 108/671, 34 S. E. 852, 47 L. R. A. 755; *Long*, 109/28, 34 S. E. 333, 46 L. R. A. 428, 77 Am. St. R. 363. Compare *Atlantic & C. Ry. Co.*, 125/328, 54 S. E. 148.

Proportion of liability not shown, no recovery. *Darnall*, 134/656, 68 S. E. 584.

Prosecutions civil and criminal, with probable cause, no basis to recover. *Hartshorn*, 104/235, 30 S. E. 666; *Short*, 104/628, 30 S. E. 810. See *Malicious Arrest and Prosecution*.

Protest of note wrongful; actual damages. *State Mutual Life & C. Asso.*, 116/855, 43 S. E. 262.

Proximate result, burden of proof that illness was. *Georgia Ry. & C. Co.*, 126/448, 54 S. E. 957, 7 L. (N.) 1177.

Illness after tort was not. *Williams*, 4 A. 372, 61 S. E. 495.

Illness not to be anticipated from expelling passenger from train. *Charleston & C. Ry. Co.*, 23 A. 161, 97 S. E. 866; *Georgia So. & Fla. Ry. Co.*, 149/295, 99 S. E. 881, reversing 22 A. 424, 96 S. E. 335.

Intervening act caused fire. *Beckham*, 127/550, 56 S. E. 638, 12 L. R. A. (N. S.) 476; see *Wilcox*, 127/580, 56 S. E. 635.

No recovery on matters not in contemplation or reasonably to be expected. *Western Union Tel. Co.*, 16 A. 204, 84 S. E. 986. Cf. *Macon Fair Asso.*, 16 A. 534, 85 S. E. 673.

Of breach or injury, recoverable as. *Mitchell*, 3 A. 542, 60 S. E. 295.

Of negligence, injury by later fall regarded as. *Georgia Ry. & C. Co.*, 126/447, 54 S. E. 797, 7 L. R. A. (N. S.) 1177.

Of omission of duty, hysteria and prostration causing incapacity for service were not. *Hadden*, 135/372, 69 S. E. 480.

Of tort, allegations not showing that physical injuries were. *Goddard*, 14 A. 722, 82 S. E. 304.

Of tortious act pleaded, recovery limited to. *Simmons*, 120/226, 47 S. E. 570, 1 A. C. 777; *Wilson*, 124/131, 52 S. E. 153; *Central of Ga. Ry. Co.*, 124/493, 52 S. E. 768.

See catchword "Remote," *infra*; *Negligence*, catchword "Proximate."

Public service; recovery by customer on disconnection. *Freeman*, 126/843, 56 S. E. 61, 7 L. R. A. (N. S.) 917.

Punitive; on aggravated tort. *Savannah & C. Ry. Co.*, 104/655, 30 S. E. 378, 69 Am. St. R. 187. *Berkner*, 116/954, 43 S. E. 463, 60 L. R. A. 559.

Aggravating circumstances authorizing. Passenger's ejection. *Georgia Ry. & El. Co.*, 6 A. 645, 65 S. E. 785; *L. & N. R. Co.*, 6 A. 766, 65 S. E. 808.

Aggravated trespass; acts and sayings admissible; limit of recovery. *Sheftall*, 133/488, 66 S. E. 253, 27 L. R. A. (N. S.) 442.

Allegations must notify defendant of case to be met. *Central of Ga. Ry. Co.*, 122/646, 50 S. E. 473, 69 L. R. A. 119.

Punitive—(Continued).

Allegation need not claim, *eo nomine*, if facts warrant assessment. *Macon Ry. Co.*, 123/773, 51 S. E. 569.

Arrest and imprisonment without a warrant, as cause for. *Piedmont Hotel Co.*, 9 A. 672, 72 S. E. 51.

Assault and battery as cause for. *McNatt*, 117/898, 45 S. E. 248; *Morgan*, 126/58, 54 S. E. 818; *Beckworth*, 6 A. 859, 65 S. E. 1075.

Assault to rape calls for. *Pye*, 9 A. 725, 72 S. E. 190.

Carrier's refusal to accept passenger. *Georgia R. & c. Co.*, 7 A. 292, 66 S. E. 961.

Carrier's tortious retaking after delivery. *Southern Ry. Co.*, 139/456, 77 S. E. 638.

Child, for abducting. *Selman*, 4 A. 375, 61 S. E. 501.

Conduct after tort, no basis for. *Jenkins*, 7 A. 484, 67 S. E. 124.

Contract breach, not allowed on. *Poland Paper Co.*, 118/461, 45 S. E. 374; *Ford*, 120/708, 48 S. E. 180; *Payton*, 4 A. 763, 62 S. E. 469.

Cumulative of actual damages; right of recovery. *Southern Ry. Co.*, 133/812, 67 S. E. 85, 26 L. R. A. (N. S.) 851.

Double finding illegal. *Georgia Ry. & El. Co.*, 6 A. 645, 65 S. E. 785.

Easement obstructed. *Darnell*, 129/62, 58 S. E. 631, 13 L. R. A. (N. S.) 333, 121 Am. St. R. 206.

Expulsion from car, wrongful. *Central of Ga. Ry. Co.*, 116/780, 43 S. E. 67; *Seaboard Air-Line Ry.*, 124/357, 52 S. E. 427, 2 L. R. A. (N. S.) 472.

Homicide. *Savannah Electric Co.*, 124/668, 53 S. E. 109.

Injuries to personality as basis to recover. *Charleston & c. Ry. Co.*, 16 A. 505, 85 S. E. 804; *Savannah Electric Co.*, 16 A. 635, 85 S. E. 932.

Instruction to jury considered. *A. C. L. R. Co.*, 14 A. 620, 82 S. E. 299.

Insult to passenger, as cause for. *Southern Ry. Co.*, 14 A. 312, 80 S. E. 697.

Invasion of property right; injury small. *Batson*, 7 A. 835, 68 S. E. 455.

Punitive—(Continued).

Issue for submission. *Atlanta & c. R. Co.*, 128/397, 57 S. E. 686.

Libel. *Western Union Tel Co.*, 108/413, 34 S. E. 216.

Malice and want of probable cause, need of showing, in trespass. *Maxwell*, 9 A. 745, 72 S. E. 292.

Malicious use of civil process. *Woodley*, 119/226, 46 S. E. 89.

No aggravation authorizing, by conductor's language to passenger. *Southern Ry. Co.*, 10 A. 523, 73 S. E. 703; cf. *Georgia So. & c. Ry. Co.*, 10 A. 558, 73 S. E. 858.

No issue as to, without allegation of wilful, wanton, malicious, or oppressive conduct. *Jackson*, 146/151, 90 S. E. 963.

No right to recover, if no right to actual or nominal damages. *W. & A. R. Co.*, 136/500, 71 S. E. 792.

Not assessed against administrator of tort-feasor. *Morris*, 126/467, 54 S. E. 1045, 115 A. S. R. 105.

Not for wounded feelings. *Morris*, 126/467, 54 S. E. 1045, 115 Am. St. R. 105.

Not recovered for trespass on land, alleged to be injury to peace, happiness, and feelings. *Stovall*, 139/244, 77 S. E. 29.

Not recovered; where no aggravation. *Southern Ry. Co.*, 136/282, 71 S. E. 414.

Not recovered where no trespass. *Southern Ry. Co.*, 101/263, 28 S. E. 847.

Not recovered without showing malice, want of probable cause, or wilful and wanton trespass. *Maxwell*, 9 A. 745, 72 S. E. 292.

Nuisance as ground for assessing. *Mayor & c. of Americus*, 14 A. 707, 82 S. E. 159.

Passenger carried beyond station; recovery not warranted. *Southern Ry. Co.*, 131/604, 62 S. E. 1027.

Conductor's misconduct toward passenger. *Williamson*, 127/126, 56 S. E. 119; *Southern Ry. Co.*, 129/665, 59 S. E. 802; cf. *Ga. So. & c. Ry. Co.*, 10 A. 558, 73 S. E. 858.

Punitive—(Continued).

Passenger wrongly ejected. *Puckett*, 9 A. 589, 71 S. E. 944.

Penalty, not treated as. *Southern Ry. Co.*, 5 A. 21, 62 S. E. 678.

Pleading should specify amount. *Daniel*, 9 A. 842, 845, 72 S. E. 438.

Possession, for interfering with. *Daniel*, 9 A. 842, 72 S. E. 438.

Proof essential to imposing. *Central of Ga. Ry. Co.*, 3 A. 142, 59 S. E. 323.

Protest of note, wrongful. *State Mutual Life &c. Asso.*, 116/855, 43 S. E. 262.

Seizure of personalty. *Henson*, 108/567, 33 S. E. 911.

Telephone removal. *Southern Bell Tel. Co.*, 118/507, 45 S. E. 319. Refusal of telephone connection, not allowed for. *Haber &c. Co.*, 118/874, 45 S. E. 696.

Trespass in good faith, not allowed for. *Georgia R. &c. Co.*, 115/954, 42 S. E. 250; 118/723, 45 S. E. 600; *Hateley*, 118/81-82, 44 S. E. 852.

Trespass wilful, cause for. *McConnell*, 134/96, 67 S. E. 440.

Trespass without aggravation, as basis of recovering. *Savannah Electric Co.*, 6 A. 373, 65 S. E. 50.

Unnecessary noises, as ground for. *Southern Ry. Co.*, 125/354, 54 S. E. 113.

Unwarranted by the facts. *Georgia R. &c. Co.*, 117/785, 45 S. E. 70; *Central of Ga. Ry. Co.*, 118/172, 44 S. E. 1001; *Southern Ry. Co.*, 118/227, 45 S. E. 23; *Southern Ry. Co.*, 119/147, 45 S. E. 1000; *Macon &c. R. Co.*, 119/297, 46 S. E. 106; *Macon Ry. &c. Co.*, 123/773, 51 S. E. 569; *Southern Railway Co.*, 138/23, 74 S. E. 778; *Wadley*, 138/276, 75 S. E. 153; *Cole*, 23 A. 479, 98 S. E. 407.

Violation of rule of commission. *Augusta Brokerage Co.*, 121/49, 48 S. E. 714. See *Central of Ga. Ry. Co.*, 122/646, 50 S. E. 473, 69 L. R. A. 119.

Wanton disinterment of dead body calls for. *McDonald*, 10 A. 845, 74 S. E. 573.

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Punitive—(Continued).

Wanton injury to property, and malafides. *Pratt Eng. Co.*, 142/401, 83 S. E. 107.

See catchwords "Additional," "Exemplary," supra.

Purchaser not entitled to recover from trespasser for damage done before purchase of land. *Smith*, 22 A. 573, 96 S. E. 570.

Railroad crossing by street; nominal damages. *Georgia R. &c. Co.*, 129/502, 59 S. E. 217.

Sidetrack or spur, from withdrawal of. *Durden*, 2 A. 66, 58 S. E. 299.

Street railroad in, as cause of action. *Athens Terminal Co.*, 129/393, 58 S. E. 891; cf. *Austin*, 108/671, 34 S. E. 852, 47 L. R. A. 755.

Telegraph line on railroad way; assessment. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

See Railroads.

Rain, liability in damages from overflow as affected by. *Parrish*, 21 A. 276, 94 S. E. 315. See catchwords "Overflow," supra; "Water," infra.

Realty, from injury to. See catchwords "Building," supra; "Timber," infra.

Receipt in full to one tort-feasor discharged the other. *Donaldson*, 102/40, 29 S. E. 135.

Recoupment against action on account; evidence admissible. *McKenzie*, 142/376, 82 S. E. 1062.

Against debt to testator, executor's conduct not matter for. *Cumberland Island Co.*, 108/756, 33 S. E. 183.

Against note for price of land. *Norton*, 130/391, 393, 60 S. E. 1049.

Against note for price of mule. *Tharpe*, 144/486, 87 S. E. 479.

Against note sued on; plea stricken. *Johnson*, 137/150, 72 S. E. 915.

Anticipated profits from subrenting, not allowed against rent. *McNaughton*, 8 A. 545, 70 S. E. 61.

Breach of bond for title. *Preston*, 109/290, 34 S. E. 571.

Breach of warranty. *Brantley Co.*, 102/851, 29 S. E. 486.

Burden of proving damage on plea of. *Farrar Lumber Co.*, 6 A. 409, 65 S. E. 60.

Recoupment—(Continued).

Defective quality of goods. **Henderson Elevator Co.**, 126/279, 55 S. E. 70.

Defined; how and when allowable. **Copeland**, 17 A. 567, 87 S. E. 846; **Bowers**, 17 A. 779, 88 S. E. 703.

Delay, results of, not within contemplation of parties, no basis of recovery. **Interstate Lumber Co.**, 16 A. 667, 85 S. E. 976.

Distinct from set-off. **National Duck Mills**, 10 A. 244, 73 S. E. 418.

Eviction, in defense to extent of. **Roberson**, 145/626, 89 S. E. 769.

Expenses of keeping stock; what recoverable, and what not. **Sandlin**, 142/131, 82 S. E. 440.

Independent contractor's acts not matter for. **Sharp**, 108/805, 34 S. E. 135.

Injury to goods, against recovery of freight charges. **Battle**, 9 A. 488, 71 S. E. 775.

Injury to live stock, against action for freight charge. **Atkinson**, 11 A. 837, 76 S. E. 597.

Items to be pleaded. **Beck Duplicate Co.**, 118/835, 45 S. E. 675.

Lien foreclosure, on building contract, recoupment against. **Neal**, 131/702, 63 S. E. 221.

Limited to damage proved. **McConnell**, 124/1039, 53 S. E. 698.

Loss by factor's breach of duty, against his suit for advances. **Frost**, 10 A. 95, 72 S. E. 719; **Wood**, 10 A. 735, 73 S. E. 1099.

Must arise from contract sued on, or not allowed. **Dooley**, 104/767, 31 S. E. 203; **Copeland**, 17 A. 565, 87 S. E. 846; **Ralph T. Birdsey Co.**, 18 A. 391, 89 S. E. 435.

Natural and proximate consequences are matter for. **Mitchell**, 3 A. 542, 60 S. E. 295.

Negligent performance of contract by architect was matter for. **Block**, 144/145, 86 S. E. 316.

No bar by limitation. **Swindell**, 3 A. 371, 60 S. E. 13.

Nominal damages; denied. **Foote & Davies Co.**, 115/985, 42 S. E. 413.

Recoupment—(Continued).

Not allowed, for breach of agreement later than that sued on. **Copeland**, 17 A. 565, 87 S. E. 846.

Not allowed for bringing the suit at bar without probable cause. **Fender**, 131/551, 62 S. E. 527.

Not allowed for malicious abuse of process in bringing suit on trial. **Purdy**, 142/309, 82 S. E. 888.

Not allowed in trover, where no special equity shown by defendant. **Youngblood**, 23 A. 731, 99 S. E. 314.

Not from separate transaction between same parties. **Gem Knitting Mills**, 3 A. 709, 60 S. E. 365.

On failure to deliver as agreed. **Central Georgia Brick Co.**, 136/693, 71 S. E. 1048.

On failure to deliver. Rescission or offer to restore not involved. **Roddenberry**, 136/187, 71 S. E. 138.

Overpayment, allowance for. **Wiseberg**, 3 A. 362, 59 S. E. 1112.

Part payments made on agreement to repair defects. **National Computing Scale Co.**, 116/512, 42 S. E. 783.

Pleading. Allegations did not warrant recoupment. **Fulghum**, 121/273, 48 S. E. 901.

Plea bad in not showing damages as result of contract breach. **White**, 112/775, 38 S. E. 80.

Pleading must be specific as to elements of damage. **Whitt**, 124/671, 53 S. E. 205; **McKenzie**, 142/376, 82 S. E. 1062.

Plea not sufficient. **Bedingfield**, 2 A. 107, 58 S. E. 320; **Ney**, 5 A. 325, 63 S. E. 143.

Plea ratifies contract. **City of Moultrie**, 6 A. 468, 65 S. E. 60.

Pleas vague and indefinite. **Swindell**, 3 A. 365, 60 S. E. 13; **Cooley**, 3 A. 497, 60 S. E. 220.

Refusal of carrier to place cars, not available against rent due. **A. C. L. R. Co.**, 14 A. 668, 82 S. E. 153.

Right of, no obstacle to suit where adversary resides. **Ambursen Co.**, 140/1, 78 S. E. 340, 47 L. R. A. (N. S.) 684.

Recoupment—(Continued).

Speculative damages no matter for. **Mountain City Mill Co.**, 124/937, 53 S. E. 458.

Statutory change of common-law rule. **Wilensky**, 136/900, 72 S. E. 418, Ann. Cas. 1912D, 271.

Tenant may set up landlord's violation, as against distraint or eviction. **Smith**, 128/90, 57 S. E. 98; **Weaver**, 134/150, 67 S. E. 662; **Jefferson**, 134/842, 68 S. E. 580. Against collection of rent, on account of failure to repair. **Park**, 141/681, 81 S. E. 1105; **Butler**, 144/553, 87 S. E. 771.

Unwarranted. **Levens**, 102/480, 31 S. E. 104.

See notes under **Pleading; Recoupment**.

Recovery but once for all. **Donaldson**, 102/42, 29 S. E. 135; **Allen**, 102/496, 29 S. E. 443.

Limited to acts counted on. **Sheftall**, 133/488, 66 S. E. 253, 27 L. R. A. (N. S.) 442.

Not upheld, plaintiff's interest in property not appearing. **Georgia Ry. &c.**, 122/290, 50 S. E. 124.

On evidence, without pleading. **Southern Ry. Co.**, 119/146, 45 S. E. 967.

Reduction of finding avoided new trial. **Central of Ga. Ry. Co.**, 108/800, 33 S. E. 995.

To present value. **Ga., Fla. & Ala. Ry. Co.**, 4 A. 288, 61 S. E. 505; **Merchants &c. Trans. Co.**, 4 A. 670, 62 S. E. 130. Mathematical process. **L. & N. R. Co.**, 141/121, 80 S. E. 622.

To prevent removal of cause. **L. & N. R. Co.**, 132/523, 64 S. E. 541, 26 L. R. A. (N. S.) 969; **Bradford**, 132/851, 65 S. E. 127.

See catchword "Apportionment," *supra*.

Release by acceptance of benefit under contract. **Petty**, 109/666, 35 S. E. 82; **Carter**, 115/853, 42 S. E. 239.

By acceptance of benefits, not effective since act of 1909 (C. C. § 2785). **Washington**, 136/638, 71 S. E. 1066, 38 L. R. A. (N. S.) 867.

Employer released from liability, in hiring contract. **New**, 116/147, 42 S. E. 391, 59 L. R. A. 115.

Executed by injured man before his death barred widow's action for his homicide. **Morton**, 145/516, 89 S. E. 488.

Not effected by signing paper in ignorance of its purport. **Ga. So. & Fla. R. Co.**, 15 A. 831, 84 S. E. 323; **A. C. L. R. Co.**, 15 A. 842, 84 S. E. 316.

Not rescinded for mistake. **Jossey**, 109/439, 34 S. E. 664.

Obtained by fraud; need of tender before action. **W. & A. R. Co.**, 141/743, 82 S. E. 139.

Obtained by fraud; offer to rescind shown without resort to equity. **Houser**, 9 A. 766, 72 S. E. 266.

Obtained by fraud, voidable. **Southern Ry. Co.**, 135/11, 68 S. E. 789.

Pleading did not show release. **Savannah Electric Co.**, 18 A. 257, 89 S. E. 301.

Plea met by evidence of fraud. **Central of Ga. Ry. Co.**, 133/153, 65 S. E. 367. By showing non-compliance with condition. **L. & N. R. Co.**, 133/763, 66 S. E. 1088.

Under conveyance, applied to damages resulting from proper, not negligent construction and maintenance of dam. **Central Ga. Power Co.**, 144/130, 86 S. E. 322.

See **Accord and Satisfaction**.

Remedy. Action, right of, not removed by right to recover penalty. **Southern Ry. Co.**, 133/806, 67 S. E. 85, 26 L. R. A. (N. S.) 851.

Adequate in damages, as ground for refusing injunction. **Macon Ry. &c. Co.**, 142/455, 83 S. E. 105.

At law inadequate, if damages not capable of estimate. **Edwards**, 116/205, 42 S. E. 417.

By statute excludes other action for. **Pennington**, 3 A. 666, S. E. 485.

Inconsistent; election as bar to recovery. **Surrency**, 13 A. 180, 78 S. E. 1013.

Remedy over. See catchwords "Joint," *supra*; "Vouchee," *infra*.

Remote and speculative. Action ex contractu or ex delicto as affecting. **Chappell**, 8 A. 788, 70 S. E. 208; **Western Union Tel. Co.**, 8 A. 514, 70 S. E. 65.

Chances for promotion of employee, or what he might have earned in other calling. **Central of Ga. Ry. Co.**, 112/926, 38 S. E. 365, 53 L. R. A. 210.

Condemnation of property, not allowed in. **Central Ga. Power Co.**, 137/124, 72 S. E. 900; see **Atlantic &c. Co.**, 120/269, 48 S. E. 115, 1 Ann. Cas. 734.

Contingent profits. **Huxford**, 124/186, 52 S. E. 439.

Contingency not too remote; probability of performance as directed. **Cronheim**, 10 A. 725, 74 S. E. 78.

Contract breach; remote or consequential damages not allowed. **Whitlock**, 142/306, 82 S. E. 886.

Contract breach, not in contemplation as result of. **Albany Phosphate Co.**, 4 A. 777, 62 S. E. 533; **Howard**, 9 A. 617, 71 S. E. 1017; **Ralph T. Birdsey Co.**, 18 A. 391, 89 S. E. 435.

Contract, landlord's breach of, to advance money for tenant to make crop. **Sheppard**, 19 A. 677, 92 S. E. 39.

Contract, breach of, to advertise and recommend attorneys in a directory. **Anderson**, 22 A. 368, 95 S. E. 1012.

Cotton decayed by delay. **White**, 112/775, 38 S. E. 80.

Crops cost, planted by croppers on plaintiff's farm. **Central Ga. Power Co.**, 144/135, 86 S. E. 324.

Defects in casting furnished, to be used in making a hay-press for sale. **Williams Mfg. Co.**, 21 A. 23, 93 S. E. 527.

Demurrer to items overruled. **Seals**, 102/818, 29 S. E. 116.

Difference in prices of goods that might have been sold. **Harris**, 112/95, 37 S. E. 123.

Earnings, proof of, not open to objection. **Wrightsville &c. R. Co.**, 129/206, 58 S. E. 769.

Employment lost by failure to deliver message. **Western Union Tel. Co.**, 14 A. 43, 80 S. E. 23; (not too remote) **Cheshire**, 16 A. 790, 86 S. E. 405.

Enhancement in value of corporate stock. **Clegg**, 114/569, 40 S. E. 763.

Estimate of probable receipts in business of ginning cotton. **Thornton**, 8 A. 588, 70 S. E. 17.

Ethical or imaginary injury to property not redressed. **Elbert County** 2 A. 50, 58 S. E. 396.

Exclusive-sale right, by withdrawing. **Mountain City Mill Co.**, 124/937, 53 S. E. 458.

Expense of waiting induced by false statement. **Central of Ga. Ry. Co.**, 122/12, 49 S. E. 727, 106 Am. St. R. 87.

Expenses incurred on non-delivery of engine, not so held. **Case Machine Co.**, 10 A. 647, 73 S. E. 591.

Fertilizer, result of failure to furnish. **Savannah Chemical Co.**, 14 A. 371, 80 S. E. 858; **Prince**, 23 A. 660, 99 S. E. 132.

Fright of woman at night by loud voices. **Central of Ga. Ry. Co.**, 116/719, 42 S. E. 1024.

House rent not in contemplation. **City of Dublin**, 142/840, 83 S. E. 939.

Illness not natural consequence of tort. **Southern Ry. Co.**, 10 A. 523, 73 S. E. 703. See catchword "Proximate," supra.

Imaginary or possible result; other circumstances preponderating. **Central of Ga. Ry. Co.**, 135/525, 69 S. E. 818.

Indecent proposals to woman by driver hired by railroad agent to convey her from station to her home at night, after being carried by train beyond her destination. **W. & A. R. Co.**, 21 A. 50, 93 S. E. 547.

Instruction to jury, need of request for. **City of Atlanta**, 19 A. 531, 91 S. E. 887.

Interest, time, and wages lost by delay, not recoverable. **Oxford Mills**, 6 A. 302, 644, 64 S. E. 1008, 65 S. E. 791.

Not so regarded, if causal connection not broken by intervening incident that can be anticipated. **Mayor &c. of Unadilla**, 145/440, 89 S. E. 423.

Not so regarded, if reasonably in contemplation when contracting. **Waycross Air-Line R. Co.**, 114/727, 40 S. E. 733.

Not so regarded; loss of promised sale privilege. *Macon Fair Asso.*, 16 A. 534, 85 S. E. 673.

Not so regarded, on breach of contract of lease. *American Ice Cream Co.*, 148/624, 97 S. E. 678.

Not so regarded; on breach of covenant to erect railroad station and warehouse. *Reidsville &c. R. Co.*, 13 A. 358, 79 S. E. 187.

Not so regarded, on contract to saw timber, etc. *Harris*, 136/47, 70 S. E. 869.

Not so regarded, on landlord's breach of rental contract. *McIntosh*, 12 A. 305, 77 S. E. 6.

Possible benefits not allowed as set-off. *Nelson*, 138/253, 75 S. E. 245.

Profits anticipated. *American Ag. Chem. Co.*, 139/496, 77 S. E. 582; *Montgomery*, 140/51, 78 S. E. 413.

Profits anticipated from proposed contract. *Bashinsky*, 1 A. 761, 58 S. E. 91.

Profits conjectural. *Piedmont Wagon Co.*, 4 A. 393, 61 S. E. 835.

Profits incapable of reasonably accurate computation. *Findlay Brick Co.*, 18 A. 446, 89 S. E. 535; *Shaw*, 18 A. 528, 89 S. E. 1054.

Profits lost by delay of message. *Propeller Co.*, 124/478, 52 S. E. 766; *aliter*, *Bass*, 127/423, 56 S. E. 465, 12 L. R. A. (N. S.) 489.

Profits lost on goods sold, held not too remote. *Walden*, 105/275, 31 S. E. 172.

Profits lost are ordinarily too remote. *Cooper*, 132/535, 64 S. E. 650.

Profits mill lessee would have earned had tramroad been good. *Upmago Lumber Co.*, 148/848, 98 S. E. 498.

Profits on resale of fruit not delivered. *Smalls*, 14 A. 84, 80 S. E. 339.

Receipts of performance lost by delay. *Alkahest Lyceum*, 6 A. 625, 65 S. E. 580.

Rent of house and hire of horse, where by plaintiff forced to remove. *A. C. L. R. Co.*, 139/423, 77 S. E. 568.

Results reasonably to be apprehended as natural and proximate result, not too remote. *Southern Ry. Co.*, 116/

152, 42 S. E. 395, 59 L. R. A. 109; *Brown Store Co.*, 121/809, 49 S. E. 839.

Telegraph carrier's dereliction. *Gurr*, 8 A. 556, 69 S. E. 1085. Non-delivery of cable message to charter a ship. *W. U. Tel. Co.*, 21 A. 737, 94 S. E. 1033.

Timber cutting. *Handcock*, 127/698, 56 S. E. 1021.

Wife's service and companionship lost. *Sappington*, 127/178, 56 S. E. 311.

See catchword "Profits," supra.

Rent, loss of, as an element. *Albany Phosphate Co.*, 4 A. 771, 62 S. E. 533; *Carstarphen*, 8 A. 164, 68 S. E. 848.

Note for, was no basis to measure damage for failure to vacate. *Macon Sash &c. Co.*, 110/402, 35 S. E. 644.

Previously paid, when no such element as to fix value of land occupied. *L. & N. R. Co.*, 143/331, 85 S. E. 110.

Reduction of, for repairs, when not allowed. *Henley*, 124/1059, 53 S. E. 672.

Rental agreed and rental value; difference as measure. *Palmer*, 2 A. 200, 58 S. E. 362.

Or salable value of right of way; when no element. *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

Value as bearing on measure. *Bridges*, 6 A. 689, 65 S. E. 700.

Value diminished, recovery for. *A. C. L. R. Co.*, 139/428, 77 S. E. 568.

Value diminution not itself an element of damages, but a circumstance tending to show decreased market value. *City of Atlanta*, 17 A. 426, 87 S. E. 698.

Value of land, depreciation in. *Mayor &c. of Macon*, 113/1112, 39 S. E. 446; *Equitable B. & L. Asso.*, 114/780, 40 S. E. 742; *Swift*, 115/884, 42 S. E. 277, 58 L. R. A. 390; *Savannah &c. Ry. Co.*, 117/893, 45 S. E. 280.

See catchword "Market," supra.

Repairs, measure on failure to make. *Thornton*, 8 A. 588, 70 S. E. 17. See catchword "Landlord," supra.

Resale as means of ascertaining, on buyer's refusal to accept goods. *Bridges Co.*, 9 A. 189, 70 S. E. 964; *Sims-Mc-*

Kenzie Co., 10 A. 742, 73 S. E. 1080;
Southern Flour &c. Co., 11 A. 401, 75
 S. E. 439; **United Roofing Co.**, 18 A.
 184, 89 S. E. 177.

At bidder's risk; measure of recovery. **Barnes**, 101/598, 28 S. E. 1017,
 65 Am. St. R. 339.

Of land rejected by buyer, not means
 to ascertain measure. **Cowdery**, 126/
 786, 55 S. E. 918, 8 L. R. A. (N. S.)
 137.

Prevention of more loss by. **Salant**,
 10 A. 265, 73 S. E. 426.

See Sales.

Rescission as a bar to action. **Bacon**,
 117/207, 43 S. E. 482.

Sale of land; damages on breach;
 and accounting. **Lytle**, 122/459, 50 S.
 E. 402.

Restoration of amount received in set-
 tlement obtained by fraud, not required
 on facts. **Dannelly**, 131/694, 63 S.
 E. 257. See catchword "Accord," supra.

Right of action in employer, not em-
 ployee. **Atlantic Coast Line R. Co.**,
 118/809, 45 S. E. 673.

River-dam. See catchword "Nuisance,"
 supra.

Road, abandonment of; measure of dam-
 ages. **Wilson**, 11 A. 816, 76 S. E. 648.

Agreement to give right of way for,
 "without cost," prevented recovery of
 damages. **Murray County**, 140/689, 79
 S. E. 783.

Appropriation of land for widening.
 Measure. **Terrell County**, 127/166, 56
 S. E. 309.

Change of, affecting property. **El-
 bert County**, 2 A. 47, 58 S. E. 396;
Mallory, 131/271, 62 S. E. 179; **West-
 brook**, 121/442, 49 S. E. 286.

Establishment of road; no recovery
 by owners on older road. **Huff**, 109/
 638, 34 S. E. 1035.

From closing. **Hillside Cotton Mills**,
 23 A. 45, 97 S. E. 459.

Land taken or injured by improving
 and widening; county's liability.
Marion County, 145/404, 89 S. E. 324;
Murray County, 141/561, 81 S. E. 856.

Opening; allegations showing no in-
 vasion of right, or illegal action. **Brown**,
 147/483, 94 S. E. 567.

See Counties; Roads and Streets.

Rules for estimating. See Charge to Jury.

Sale of goods; measure of liability of
 vendee refusing to take them. **Davis**
Sulphur Ore Co., 109/608, 34 S. E.
 1011; (remedies of seller) **Oklahoma**
Vinegar Co., 116/140, 42 S. E. 378,
 59 L. R. A. 122, 94 Am. St. R. 112;
United Roofing &c. Co., 18 A. 184, 89
 S. E. 177.

Measure of damages on breach of
 contract; remedy of purchaser. **Ameri-
 cus Grocery Co.**, 119/489, 46 S. E. 657;
Huggins, 121/311, 48 S. E. 933.

Measure on failure to deliver. **San-
 ders**, 124/684, 52 S. E. 884.

Non-delivery; proof of market value,
 when necessary. **Sizer**, 129/144, 58
 S. E. 1055.

Notice of resale at bidder's risk,
 fixing measure of liability under stat-
 ute. **Gay**, 138/399, 75 S. E. 323.

Quality inferior; measure of dam-
 ages. **Seaboard Lumber Co.**, 122/370,
 50 S. E. 121.

Seller not liable after delivery to
 carrier. **McCullough**, 118/424, 45 S.
 E. 379.

See catchwords "Bid," "Resale," supra;
 "Warranty," infra; Sales.

Satisfaction by new agreement executed.
Poland Paper Co., 118/458, 45 S. E.
 374. See catchword "Accord," supra.

Seduction as element, in breach of
 promise of marriage. **Graves**, 123/
 224, 51 S. E. 318; **Anderson**, 125/62,
 54 S. E. 197, 114 Am. St. R. 185, 5
 Ann. C. 103.

Verdict for \$10,000; marriage after-
 ward. **Graves**, 3 A. 510, 60 S. E. 274.

See Parent and Child.

Services of minor child, for loss of.
Crawford, 106/870, 33 S. E. 826.
 Definite allegation required. **Central**
Ga. Power Co., 141/198, 80 S. E. 647.
 Matters considered in estimating re-
 covery. **Central of Ga. Ry. Co.**, 143/
 753, 85 S. E. 920.

Minor employed without parent's
 consent; recovery limited. **Culberson**,
 127/599, 56 S. E. 765, 9 L. R. A. (N.
 S.) 411, 9 Ann. Cas. 507.

No recovery by father who relinquished control, or did not provide. **Southern Ry. Co.**, 120/524, 48 S. E. 160.

Of wife; extent of recovery for loss. **Georgia R. & C. Co.**, 124/460, 52 S. E. 916, 4 Ann. C. 200.

Of wife; husband's right to recover. Recovery by her for loss of earnings. **Burt**, 142/182, 82 S. E. 542.

Value; jurors' opinion may supplant that of witnesses. **Jennings**, 127/779, 56 S. E. 1026.

See catchwords "Child," "Married woman," supra; **Parent and Child**.

Set-off, against assault and battery. **Morgan**, 126/58, 54 S. E. 818.

Assault and battery, against malicious prosecution. **Horton**, 110/355, 35 S. E. 663.

Assault and battery; injuries from same affray. **McNatt**, 117/898, 45 S. E. 248.

Benefit and enhancement as against consequential damages from public improvement. **Nelson**, 137/252, 75 S. E. 245; **Central of Ga. Ry. Co.**, 12 A. 370, 77 S. E. 193; (not against value of land taken) **City of Atlanta**, 17 A. 619, 87 S. E. 910; (street closing) **Coker**, 123/483, 51 S. E. 481.

Benefit payments allowed as, under employer's liability act. **Washington**, 136/638, 71 S. E. 1066, 38 L. R. A. (N. S.) 867.

Building defects as basis of. **Small**, 4 A. 395, 61 S. E. 831.

Conjectural or speculative beneficial results not allowed as. **Nelson**, 138/253, 75 S. E. 245.

Contract breach not set off against trover. **Harden**, 110/392, 36 S. E. 100.

Damaged condition of goods, and loss of profit on undelivered part, against suit for price. **Robson**, 12 A. 781, 78 S. E. 610.

Delay in selling, against suit for factor's advances. **Frost**, 10 A. 95, 72 S. E. 719.

Ex contractu, against action ex delicto, and vice versa, is equitable; not allowed in city court. **Drake**, 13 A. 277, 79 S. E. 167; **McArthur**, 13 A.

502, 79 S. E. 374; **Wills**, 15 A. 352, 83 S. E. 275; **Drake**, 16 A. 388, 85 S. E. 618.

Ex delicto, not allowed in suit ex contractu; rule and exceptions. **Giles**, 102/702, 29 S. E. 600; **Hecht**, 114/921, 41 S. E. 24; **Ray**, 119/926, 47 S. E. 205; **Cornett**, 124/947, 53 S. E. 460; **Potts-Thompson Co.**, 137/648, 74 S. E. 279; **Geer**, 5 A. 251, 62 S. E. 1054; **Janes**, 14 A. 72, 80 S. E. 339; **Jones**, 14 A. 84, 80 S. E. 341.

Not allowed; save on equitable grounds. **Standhardt**, 145/147, 88 S. E. 565; **Mayor & Co. of Gainesville**, 145/299, 89 S. E. 210; **Copeland**, 17 A. 567, 87 S. E. 846; (if plaintiff insolvent) **Gray**, 127/548, 56 S. E. 752.

Not allowed against suit on notes. **McLendon**, 2 A. 421, 58 S. E. 690; (but see aliter) **Butler**, 128/431, 57 S. E. 764. Not allowed in suit for rent. **Smith**, 128/90, 57 S. E. 98.

Expense of manufacture, against trover recovery, where taking was bona fide. **Strickland**, 12 A. 671, 78 S. E. 48.

Increase in property value, when not allowed on injury by street change. **Brunswick & Co. R. Co.**, 112/608, 37 S. E. 888, 52 L. R. A. 396; **Ficken**, 114/970, 41 S. E. 58; (by nuisance) **Swift**, 115/885, 42 S. E. 277, 58 L. R. A. 390.

Increase of value of property wrongly taken, by expenditure or labor. **Milltown Lumber Co.**, 5 A. 344, 349, 63 S. E. 370.

Injury to goods, against suit for freight charge. **Atkinson**, 11 A. 837, 76 S. E. 597; but see **Wilensky**, 136/889, 72 S. E. 418, Ann. Cas. 1912D, 271.

Items to be pleaded. **Beck Duplicator Co.**, 118/836, 45 S. E. 675.

Prevented by election of inconsistent remedy. **Surrency**, 13 A. 180, 78 S. E. 1013.

Profits anticipated, not allowed. **Hall**, 11 A. 840, 76 S. E. 957.

Rental contract, from breach of, against distraint. **Moore**, 13 A. 392, 79 S. E. 246.

- Tort of non-resident plaintiff, when not allowed in suit to reform contract. **Fambrough**, 138/47, 74 S. E. 762.
- Unliquidated damages from contract breach, against note sued on. **Pickett**, 135/299, 69 S. E. 478.
- Waiver of tort by pleading damages ex contractu. **Coplan**, 11 A. 488, 75 S. E. 822. See **Florida Cen. R. Co.**, 11 A. 279, 75 S. E. 164.
- Warranty of title to land, breach of. **Shaw**, 14 A. 303, 80 S. E. 735.
- See catchword "Recoupment," supra;
- Pleading; Set-off.**
- Settlement** as bar to recovery. See catchwords "Accord," "Homicide," supra.
- Sewer or drain; liability, and measure of damages.** **Langley**, 118/590, 45 S. E. 486, 98 Am. St. R. 133.
- Sheriff's liability on failure to sell; measure.** **Brannon**, 111/850, 36 S. E. 689.
- On failure to take bond. **Edwards**, 136/733, 72 S. E. 34; **Hightower**, 5 A. 408, 63 S. E. 541.
- See **Sheriffs.**
- Sickness, and deterioration in rental and market value of property; measure.** **Central Ga. Power Co.**, 144/135, 86 S. E. 324. See **Towaliga Falls Power Co.**, 19 A. 347, 91 S. E. 442.
- As an element of damages. **Martin**, 18 A. 226, 89 S. E. 495.
- Resulting from humiliating insult, as an element. **Georgia So. Ry. Co.**, 5 A. 740, 63 S. E. 525.
- See catchword "Nuisance," supra.
- Slander** resulting in arrest, temperate damages for. **Stevens**, 18 A. 486, 89 S. E. 597.
- See **Libel and Slander.**
- Special damages.** Allegation necessary, if published words no libel per se. **Waters**, 120/424, 47 S. E. 911; **Witham**, 124/688, 53 S. E. 105, 4 L. R. A. (N. S.) 977. Aliter if words libelous per se. **Brown**, 109/431, 34 S. E. 717.
- Allegation and proof essential, in libel and slander. **Jones**, 131/422, 62 S. E. 279; **Spence**, 142/267, 82 S. E. 646, Ann. Cas. 1916A, 1195; (necessary allegation) **Ford**, 116/655, 42 S. E. 998; (unnecessary) **Flanders**, 120/885, 48 S. E. 327; **Flanders**, 124/714, 52 S. E. 687; (deficient allegations) **Whitley**, 9 A. 90, 70 S. E. 686.
- Burden of furnishing data sufficient to estimate, with reasonable certainty. **National Refrigerator Co.**, 9 A. 725, 72 S. E. 191.
- Elements; pleading. **City Council**, 101/725, 28 S. E. 994; **Sutton**, 101/776, 29 S. E. 53.
- Evidence must show amount recoverable, distinct from claims not allowable. **Stewart**, 136/36, 70 S. E. 867.
- General or nominal, not recoverable in suit solely for special damages. **Adams**, 18 A. 367, 89 S. E. 441; **Prince**, 23 A. 660, 99 S. E. 132; **Red Cypress Co.**, 5 A. 202, 62 S. E. 1056.
- Injunction, when essential to. **Adair**, 124/291, 52 S. E. 739.
- Nuisance, from. **Savannah & C. Ry. Co.**, 117/893, 45 S. E. 280.
- Particularity of allegations, need of. **L. & N. R. Co.**, 132/175, 63 S. E. 598.
- Pleading proper, with data for calculation. **Graham**, 120/757, 49 S. E. 75.
- Proof not required, on violation of legal right. **Pavesich**, 122/191, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. R. 104, 2 Ann. C. 561.
- Recovery limited to, under allegations. **Wright**, 128/432, 57 S. E. 684.
- Too vague and speculative. **Cothran**, 123/190, 51 S. E. 285.
- To property, by obstruction of alley. **Hendricks**, 143/106, 84 S. E. 440.
- Water diversion, recovery for. **Sweetman**, 147/436, 94 S. E. 542.
- See catchword "General," supra.
- Specification** of, in verdict against joint defendants. **Ivey** 124/159, 52 S. E. 436, 110 Am. St. R. 160.
- Specific performance, damages in lieu of.** **Causey**, 106/193, 32 S. E. 138; (demurrable petition) **Watkins**, 137/330, 73 S. E. 581; (on breach of covenant) **Greer**, 140/744, 79 S. E. 846; (on breach of promise to devise specific property) **Gordon**, 145/682, 89 S. E. 749, Ann. Cas. 1918A, 852; (rule no

applied) **Marchman**, 145/682, 89 S. E. 780.

Performance proper but impossible; part performance not accepted; damages assessed instead. **Boney**, 147/30, 92 S. E. 636.

Pleading. Allegations not sufficient to recover (two JJ. dissenting). **Rosenkrantz**, 147/732, 95 S. E. 225.

See catchwords "Contract breach."

Speculative damages. See catchwords "Profits," "Remote," *supra*.

Splitting of cause of action for. **Seaboard Air-Line Ry.**, 18 A. 341, 89 S. E. 438. See *Actions*.

Stockholder injured by taking of corporate property; liability. **Bridges**, 12 A. 108, 76 S. E. 996.

Stock transfer refused; measure of damages. **Bank of Culloden**, 120/576, 48 S. E. 226, 102 Am. St. R. 115; (allegation insufficient). **Hilton**, 8 A. 10, 68 S. E. 746.

See catchwords "Deceit," "Fraud," *supra*.

Street. Alteration of grade, or improvement; measure of damages for injury to abutting property. **Atlantic & Ry. Co.**, 125/328, 54 S. E. 148; **City of Atlanta**, 142/325, 82 S. E. 899; **Mayor & c. of Macon**, 2 A. 355, 58 S. E. 540; **Mayor & c. of Americus**, 3A. 159, 59 S. E. 434; **Mayor & c. of Gainesville**, 12 A. 126, 76 S. E. 1034; **Central of Ga. Ry. Co.**, 12 A. 369, 77 S. E. 193; **Mayor & c. of Cedartown**, 13 A. 111, 78 S. E. 829; **City of Rome**, 15 A. 534, 83 S. E. 867; **City of Atlanta**, 17 A. 426, 619, 87 S. E. 698, 910; **City of Atlanta**, 19 A. 694, 92 S. E. 28; **Williamson**, 19 A. 784, 92 S. E. 291; (before tender of payment for injury) **Fleming**, 130/383, 61 S. E. 5; (need of prepayment of damages to abutting property) **City of Rome** 132/337, 63 S. E. 830; (measure of consequential damages) **Mayor & c. of East Rome**, 124/852, 53 S. E. 103; (cause of action) **Smith**, 5 A. 286, 63 S. E. 48; (prevention of decrease of value by conforming to) **Estes**, 103/780, 30 S. E. 246; (recovery denied where same damage suffered by public generally) **Ward**, 143/80, 84 S. E. 374 (relevant evidence on diminu-

tion of market value) **Mayor & c. of Americus**, 13 A. 321, 79 S. E. 36; **City of Atlanta**, 15 A. 654, 84 S. E. 139; (testimony held incompetent as reply to defense of enhancement in value) **Burns**, 144/480, 87 S. E. 414.

Closing of street, damages from injury by. **Marietta Chair Co.**, 121/399, 49 S. E. 312, 104 Am. St. R. 156, 2 Ann. C. 83; **Coker**, 123/483, 51 S. E. 481, dist. in **Adair**, 124/292, 52 S. E. 739.

Closing in part, by selling strip of land. **Patton**, 124/525, 52 S. E. 742.

Closing or obstructing, to injury of adjacent property. **Kehoe**, 131/269, 62 S. E. 185.

Extension across railroad-track; compensation. **Town of Poulan**, 123/605, 51 S. E. 657; (recovery denied) **Cleveland**, 102/233, 29 S. E. 584, 43 L. R. A. 638.

Railroad in street; injury to abutting property. **Atlantic & Ry. Co.**, 125/328, and *cit.*, 54 S. E. 148. See **Atlantic & R. Co.**, 125/529, 54 S. E. 736.

See *Municipal Corporations*; *Streets*.

Subrogation, right of. **Seaboard Air-Line Ry.**, 18 A. 341, 89 S. E. 438. See *Equity*.

Suffering. See catchwords "Mental," "Pain," *supra*.

Supersedeas bond, damages within purpose of. **Morel**, 134/687, 68 S. E. 588.

Tables, annuity and mortality, admissible on proof of permanent injury. **Collins Park & c. R. Co.**, 112/663, 37 S. E. 795.

Admissible; though evidence conflict as to permanency of injury. **L. & N. R. Co.**, 135/522, 69 S. E. 870.

Calculations and estimates. **City of Columbus**, 102/294, 29 S. E. 749; **Savannah & c. Ry. Co.**, 104/615, 30 S. E. 770; **Central of Ga. Ry. Co.**, 116/346, 42 S. E. 510; **Western & A. R. Co.**, 117/548, 44 S. E. 1; **Central of Ga. Ry. Co.**, 118/143, 44 S. E. 975; **Southern Ry. Co.**, 119/148, 45 S. E. 1000; **Macon Ry. & c. Co.**, 123/779, 51 S. E. 569; **Southern Cotton Oil Co.**, 125/372, 54 S. E. 110; **Atlantic & c. R. Co.**,

125/456, 54 S. E. 622; **Southern Ry. Co.**, 128/244, 57 S. E. 504.

Exclusion, no error for reversal, if non-liability found. **McBride**, 125/515, 54 S. E. 674.

Not considered without evidence of value of services or earning capacity. **Atlanta &c. Ry. Co.**, 122/83, 49 S. E. 818.

Seven per cent. table used. **Central of Ga. Ry. Co.**, 112/914, 38 S. E. 350.

Use of tables. **Southern Ry. Co.**, 132/858, 64 S. E. 1083; **Central of Ga. Ry. Co.**, 138/114, 74 S. E. 839; **Betts Co.**, 139/199, 77 S. E. 77; **Central of Ga. Ry. Co.**, 2 A. 804, 59 S. E. 81; **Ga., Fla. & Ala. Ry. Co.**, 4 A. 288, 61 S. E. 505; **Southern Ry. Co.**, 6 A. 172, 64 S. E. 703; **Jackson**, 7 A. 644, 67 S. E. 898; **Central of Ga. Ry. Co.**, 10 A. 483, 73 S. E. 702; **Central of Ga. Ry. Co.**, 21 A. 235, 94 S. E. 50; (instructions to jury) **Central of Ga. Ry. Co.**, 10 A. 483, 485, 73 S. E. 702; **Central of Ga. Ry. Co.**, 13 A. 50, 78 S. E. 781; **Southern Ry. Co.**, 13 A. 799, 81 S. E. 269.

Use of tables not essential; computation without. **Southern Ry. Co.**, 7 A. 659, 67 S. E. 886; **A. C. L. R. Co.**, 8 A. 186, 68 S. E. 875; (estimate for permanent injury) **Southern Ry. Co.**, 10 A. 532, 76 S. E. 763; (estimate of life value) **Standard Oil Co.**, 15 A. 572, 84 S. E. 69; **City of Moultrie**, 11 A. 649, 75 S. E. 991.

Te'gram incorrectly transmitted; liability. **Western Union Tel. Co.**, 114/576, 40 S. E. 815, 88 Am. St. R. 36; **Stewart**, 131/31, 61 S. E. 1045, 18 L. R. A. (N. S.) 692, 127 Am. St. R. 205.

Telegraph line, assessment on condemning way for. **Atlantic &c. R. Co.**, 120/269, 48 S. E. 15, 1 Ann. C. 734. Taking land. **Postal Tel. Co.**, 124/746, 52 L. R. A. (N. S.) 333.

See **Telegraphs and Telephones**.

Temperate, for slander resulting in arrest. **Stevens**, 18 A. 486, 89 S. E. 597.

Temporary disablement of horse; measure. **Telfair County**, 1 A. 438, 57 S. E. 1059.

Tenant's liability, and right of action. See catchword "Landlord," supra; **Landlord and Tenant**.

Third person's liability. See catchword "Vouchee," infra.

Timber cutting; diminution in market value of freehold as measure. **Fender**, 145/505, 89 S. E. 518.

Destroyed; measure of recovery. **Southern Ry. Co.**, 128/438, 57 S. E. 694; **Southern Ry. Co.**, 129/373, 58 S. E. 1044; **W. & A. R. Co.**, 129/526, 59 S. E. 266.

Growing, measure for destroying; and where no depreciation in market value of land. **Miller**, 132/582, 64 S. E. 658.

Measure for injury to. **Atlantic Coast Line R. Co.**, 5 A. 215, 62 S. E. 1022; (for cutting and removing) **Milltown Co.**, 5 A. 344, 63 S. E. 270.

Recovery for injury to, by holder of bond for title; how limited. **Cogan**, 18 A. 421, 89 S. E. 491.

Time lost. Recovery on evidence under general allegation. **Nashville &c. Ry.**, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. C. 210.

Recovery upheld. **Linder**, 122/425, 50 S. E. 124.

Recovery unsupported. **Macon Ry. &c. Co.**, 120/511, 48 S. E. 232; **Mutual Life Ins. Co.**, 131/61, S. E. 1034; **Carr**, 12 A. 830, 79 S. E. 41.

When an element of damages. **Southwestern R. Co.**, 14 A. 674, 82 S. E. 166.

When no element. **Malone &c. Co.**, 6 A. 115, 64 S. E. 66. See catchwords "Date," "Remote," supra.

Title, proof of, essential to recovery. **Alabama R. Co.**, 112/62, 37 S. E. 91.

As basis to recover. **A., B. & A. R. Co.**, 7 A. 566, 67 S. E. 678. Distinct claims from one tort. **Central of Ga. Ry. Co.**, 7 A. 464, 67 S. E. 118.

See catchword "Possession," supra.

Tortfeasors joint, liability of. **Finley**, 5 A. 722, 64 S. E. 312.

See catchwords "Ex delicto," supra; **Torts**.

Trade-mark or name, for infringement of. **Hagan & Dodd Co.**, 1 A. 100, 57 S. E. 970.

Trespass after pleading, alleged by amendment. *Becker*, 133/865, 67 S. E. 92.

Backing water, as ground of liability. *City of Jackson*, 146/250, 91 S. E. 63.

Blasting; recovery denied, where negligent manner of work not alleged. *Spencer*, 140/632, 79 S. E. 543.

By mistake; actual damages only. *Hateley*, 118/81-82, 44 S. E. 852; *Georgia R. & Co.*, 118/723, 45 S. E. 600.

Continuing; recovery only to date of suit. *Ketron*, 130/541, 61 S. E. 113.

Elements for recovery. *Allen*, 107/838, 33 S. E. 696. *Southern Ry. Co.*, 117/287, 43 S. E. 697.

Good faith as affecting measure of damages. *Milltown Lumber Co.*, 5 A. 344, 63 S. E. 270.

Injured person not under duty of care as to result of. *City of Jackson*, 146/250, 91 S. E. 63.

Joint; recovery for greatest injury. *Ivey*, 124/159, 52 S. E. 436, 110 Am. St. R. 160.

Land taken from city lot; recovery. *Tolbert*, 134/136, 67 S. E. 540.

Levy unlawful; cause of action alleged. *Barton-Price Co.*, 134/710, 68 S. E. 484.

Limitation of action for occupation of land, where no recurring injury. *Adams*, 141/701, 81 S. E. 1110; *Godfrey*, 21 A. 384, 94 S. E. 604.

Nominal damages in. *Batson*, 7 A. 835, 68 S. E. 455.

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Timber cut; liability, and measure of damages. *Hart*, 126/439, 55 S. E. 189; *McConnell*, 134/96, 67 S. E. 440; *Smith*, 134/523, 68 S. E. 94; *Shippen Lumber Co.*, 136/37, 70 S. E. 672. See *Peterson*, 137/179, 73 S. E. 15.

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Trespasser expelled wantonly; recovery. *Savannah & Ry. Co.*, 104/655, 30 S. E. 378, 69 Am. St. R. 187.

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Election of verdict, measure on. *Hodges*, 115/1000, 42 S. E. 394; *O'Neill Mfg. Co.*, 118/114, 44 S. E. 980.

Election of money verdict; recovery limited. *Langdale*, 139/324, 77 S. E. 172; *Thomason*, 139/341, 77 S. E. 155; *Witt*, 145/674, 89 S. E. 747.

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Need of proving. Verdict not to be directed, though defendant be in default. *Jennings*, 127/778, 56 S. E. 1026; *Lamb*, 143/490, 85 S. E. 705; *Palmer*, 2 A. 200, 58 S. E. 362.

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Agreed, when not limited to. *Georgia So. &c. Ry. Co.*, 121/231, 48 S. E. 807.

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Difference between purchase-price and market value on day of purchase, as measure on breach of contract by seller. *Cook*, 19 A. 207, 91 S. E. 427.

Difference in market value of abutting land before and after street-grade changed, as measure of damages. *City of Atlanta*, 19 A. 694, 92 S. E. 28; *Williamson*, 19 A. 784, 92 S. E. 291.

Difference in value, evidence as to loss of, sustaining verdict. *L. & N. R. Co.*, 19 A. 507, 91 S. E. 883.

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Enhancement, no obstacle to recovery for taking property. *Atlanta &c. R. Co.*, 125/540, 54 S. E. 736.

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Enhancement, when not considered as defense to action for damages. *Pelham Phosphate Co.*, 21 A. 550, 554, 94 S. E. 846.

Errors harmless, where finding less. *City of Rome*, 134/650, 68 S. E. 330; *A. & B. R. Co.*, 134/673, 68 S. E. 673.

Full value of life, as measure of recovery for homicide. See catchword "Homicide," supra.

Full, recoverable for article rendered totally useless. *Central of Ga. Ry. Co.*, 14 A. 740, 82 S. E. 310.

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Hog killed; recovery not necessarily limited to market value. *A. C. L. R. Co.*, 19 A. 632, 91 S. E. 1006.

Improvement as affecting amount of recovery. *Milltown Lumber Co.*, 5 A. 344, 63 S. E. 270. See *Ejectment*.

Increase by erection of nuisance, as bearing on recovery. *Jones*, 6 A. 513, 65 S. E. 361.

Land value; determination by opinions. *Reidsville &c. R. Co.*, 13 A. 358, 79 S. E. 187. Evidence, admissibility of. *City of Atlanta*, 19 A. 694, 92 S. E. 28. See *Central Ga. Power Co.*, 143/10, 84 S. E. 67.

Life, right of survivorship in suit for value of. *Stephens*, 134/818, 68 S. E. 551.

Life value, how ascertained. *W. & A. R. Co.*, 22 A. 315, 96 S. E. 17.

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Of animal must be proved. *Southern Ry. Co.*, 102/765, 29 S. E. 822. See catchword "Dog," *supra*.

Of estate of indeterminate duration, ascertainment of. *Hayes*, 1 A. 31, 57 S. E. 1087.

Of note; face amount not conclusive. *Citizens Bank*, 132/771, 65 S. E. 81.

Of professional services, not shown by proof of what was paid. *Allen*, 113/107, 38 S. E. 322.

Opinions of value, though agreeing, and uncontradicted, do not control finding of jury. *Atlantic &c. Ry. Co.*, 125/478, 54 S. E. 330; *McCarthy*, 137/282, 73 S. E. 493; *Graham*, 137/668, 74 S. E. 426; *Southern Ry. Co.*, 139/362, 77 S. E. 44; *Georgia, Fla. &c. Ry. Co.*, 143/312, 85 S. E. 197; *Marshall*, 1 A. 485, 57 S. E. 1066; *Minchew*, 5 A. 154, 62 S. E. 716; *Great Am. Ins. Co.*, 11 A. 784, 76 S. E. 159; *Johnson*, 19 A. 192, 91 S. E. 220.

Value—(Continued).

Proof necessary, though defendant's pleas were stricken. *Jones*, 23 A. 99 S. E. 237.

Proof of market price to show. *Callaway*, 126/195, 55 S. E. 23.

Proof of, needed, to recover amount paid. *Southern Ry. Co.*, 128/814, 58 S. E. 470.

See catchwords "Estimate," "Homicide," "Life," "Market," "Rental," "Tables," "Trover," *supra*; Evidence, catchword "Value."

Verdict, correction of, as to interest found, without new trial or writing off. *Seaboard Air-Line Ry.*, 136/505, 71 S. E. 887.

Error to urge finding of, with suggestion of compromise as to amount. *Alabama Great So. R. Co.*, 136/555, 71 S. E. 799, *Ann. Cas.* 1912D, 438.

For damages, under prayer for process and general relief. *Wilson*, 146/364, 92 S. E. 516.

For separate sums against different defendants; when not legal. *Hay*, 118/243, 44 S. E. 1002; *Glore*, 131/481, 62 S. E. 580.

For 10,000, construed to mean \$10,000. *Central of Ga. Ry. Co.*, 131/166, 62 S. E. 164.

For unliquidated damages, must state amount as basis of judgment. *Mayor &c. of Washington*, 103/675, 30 S. E. 434.

In solido, proper, of value of property and consequential damages. *Central Ga. Power Co.*, 137/347, 73 S. E. 505; see catchword "Interest," *supra*.

Items separated in, not proper in form; but not set aside. *Telfair County*, 1 A. 438, 57 S. E. 1059.

Too small; inference of mistake or bias. *Anglin*, 128/469, 57 S. E. 780.

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Vindictive damages not recoverable for breach of duty not involving trespass. *Southern Ry. Co.*, 101/263, 28 S. E. 847.

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Voluntary act, no basis to recover. *Southern Ry. Co.*, 4 A. 564, 61 S. E. 1048.

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Vouching into court, right of, does not include volunteering. *Armour Car Lines*, 5 A. 619, 63 S. E. 667.

Wages for full time not recovered by servant not allowed to enter. *Harris*, 112/95, 37 S. E. 123.

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Paid when awaiting delivery of materials, as element. *Carr*, 12 A. 830, 79 S. E. 41; (when not recoverable) *Oxford Mills*, 6 A. 302, 64 S. E. 1008.

Waiver by acquiescence in public work; knowledge of facts essential. *Mayor & c. of Americus*, 13 A. 322, 79 S. E. 36.

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Exception to ruling not waived by consent to verdict. *Wright*, 112/884, 38 S. E. 94, 52 L. R. A. 621.

Forbearance to sue is not waiver. *Hardwood Lumber Co.*, 134/826, 68 S. E. 725, 32 L. R. A. (N. S.) 192.

Full performance and execution of new agreement is waiver, mere acceptance of goods is not. *Poland Paper Co.*, 118/458, 45 S. E. 374.

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Wanton and malicious motive in conduct, as ground for recovering. *O'Neal*, 143/291, 84 S. E. 962.

Warehouseman's omission to procure insurance; non-liability for loss. *Zorn*, 106/61, 31 S. E. 797. See *Warehousemen*.

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Of title to land, measure on breach of, actual loss. Items held not proper elements of recovery. *Taylor*, 131/416, 62 S. E. 291; *White*, 131/462, 62 S. E. 590, 15 Ann. Cas. 1198; *Croom*, 145/347, 89 S. E. 199.

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By tenant's removal of articles attached to realty. *Brigham*, 128/484, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75.

Water, action for injury by, barred by former recovery. *Clark*, 104/184, 30 S. E. 741.

Appropriated or polluted; damages incapable of ready computation. *Woodall*, 104/156, 30 S. E. 665.

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Diversion from natural flow, recovery for. *Sweetman*, 147/436, 94 S. E. 542.

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Diversion, injury to land from, gives right to recover. *L. & N. R. Co.*, 139/544, 77 S. E. 796; *Mayor &c. of Mill-edgeville*, 139/692, 78 S. E. 35.

Flooding land; allegations indefinite as to recovery permanent or pro tempore. *L. & N. R. Co.*, 143/414, 85 S. E. 341.

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Overflow and percolation of land; liability. *Carrington*, 121/250, 48 S. E. 970; *Holbrook*, 121/319, 48 S. E. 922.

Overflow of cellar, by neglecting sewer; recovery. *Mayor &c. of Macon*, 108/310, 34 S. E. 152. Overflow of land, by omitting to keep race in order. *Sharp*, 108/805, 34 S. E. 135.

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636, 642, 645; *Towaliga Falls Power Co.*, 6 A. 749, 65 S. E. 844; *City of Rome*, 12 A. 756, 78 S. E. 475; *Towaliga Falls Power Co.*, 19 A. 847, 91 S. E. 442.

Source destroyed, an element of reduction of market value. *Potts*, 140/433, 79 S. E. 110.

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Supply underground, recovery for disturbing, denied. *Stoner*, 132/178, 63 S. E. 897.

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Watercourse, from pollution of. See **Waters**.

Way, assessment on condemning. *Jones*, 120/1, 8, 47 S. E. 549, 1 Ann. C. 185; *Atlantic &c. R. Co.*, 120/269, 48 S. E. 15, 1 Ann. C. 734.

Wife's action for services, etc. See catchwords "Married woman," *supra*; **Husband and Wife**.

Witness to prove value, plaintiff competent, though defendant dead. *Morris*, 2 A. 61, 58 S. E. 316.

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Worldly circumstances of parties, when not to be considered. *Southern Ry. Co.*, 105/316, 31 S. E. 182; *Central of Ga. Ry. Co.*, 116/780, 43 S. E. 67; *Georgia R. &c. Co.*, 117/785, 45 S. E. 70; *Georgia Ry. &c. Co.*, 125/563, 54 S. E. 639, 6 L. R. A. (N. S.) 103, 114 Am. St. R. 246.

Consideration, how limited. *Southern Ry. Co.*, 126/404, 55 S. E. 37, 7 L. R. A. (N. S.) 926.

Exclusion of evidence, no error. *Binder*, 13 A. 384, 79 S. E. 216.

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Direction to write off, when not given. *Wadley So. Ry. Co.*, 145/689, 89 S. E. 765.

Excess of recovery in trover. *Owens*, 13 A. 419, 79 S. E. 225.

Excessive finding not cured by writing off. *Central of Ga. Ry. Co.*, 112/924, 38 S. E. 365, 53 L. R. A. 210; *Daniel*, 118/408, 45 S. E. 379; *Seaboard Air-Line Ry.*, 129/796, 59 S. E. 1110; *Glore*, 131/481, 62 S. E. 580.

Interest found apart from amount of discretionary damages. *A. C. L. R. Co.*, 18 A. 279, 88 S. E. 101.

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Power to order, limited to case where excess accurately ascertainable. *Central of Ga. Ry. Co.*, 112/924, 38 S. E. 365, 53 L. R. A. 210; *Daniel*, 118/408, 45 S. E. 379; *Tifton &c. Ry. Co.*, 122/250, 50 S. E. 105; *Georgia Ry. &c. Co.*, 122/547, 552, 50 S. E. 478.

Voluntary, to cure excessive finding. *Mayor &c. of Brunswick*, 103/233, 29 S. E. 701, 68 Am. St. R. 92; *Savannah &c. Ry. Co.*, 104/655, 30 S. E. 378, 69 Am. St. R. 187; *Thornton*, 108/9, 11, 33 S. E. 633; *Central of Ga. Ry. Co.*, 112/935, 38 S. E. 365, 53 L. R. A. 210.

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Action lies for injury to, in transportation. *L. & N. R. Co.*, 123/62, 51 S. E. 24, 51 Ann. Cas. 28.

For unlawful mutilation. *Medical College*, 1 A. 468, 57 S. E. 1083; *Rushing*, 4 A. 823, 62 S. E. 563.

Autopsy, non-liability of surgeon for making, for burial certificate. *Rushing*, 4 A. 823, 62 S. E. 563.

Disinterment wrongful, right of action for. *Jacobus*, 107/518, 33 S. E. 853, 73 Am. St. R. 174; *McDonald*, 10 A. 845, 74 S. E. 573.

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Husband's right, as to wife's dead body. *Rushing*, 4 A. 823, 62 S. E. 563.

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Mutilation, right of action for, in husband. *Rushing*, 4 A. 823, 62 S. E. 563.

Rights of husband or wife and relatives as to. *L. & N. R. Co.*, 123/62, 51 S. E. 24, 3 Ann. Cas. 128; 3 A. 80, 59 S. E. 341.

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Acceleration of maturity of debt; provision not construed against borrower. *Provident &c. Society*, 124/399, 52 S. E. 289.

Accord and satisfaction, agreement to accept less sum is not, unless executed. *Bowen*, 2 A. 521, 58 S. E. 784.

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Retention of check did not show. *Rhodes*, 135/516, 69 S. E. 705.

Account liquidated by negotiable note; need of producing or accounting for note before recovery. *Jackson*, 102/87, 29 S. E. 149, 66 Am. St. R. 156.

Action not maintained for balance of account, where prior suit for part was settled. *Atlanta Elevator Co.*, 106/427, 32 S. E. 541.

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Failure of, to make returns; right of creditor in court of ordinary. *Zipperer*, 145/829, 90 S. E. 40.

Liability of, after distributing estate, on debt of which he had notice. *Stokes*, 143/721, 85 S. E. 895.

Sale by, to pay debts; objections not sustained. *Jackson*, 111/834, 36 S. E. 214.

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Right of action of creditor of, to set aside discharge obtained by fraud. *Seagraves*, 143/573, 85 S. E. 760.

Advance not given by purchasing secured debt. *Abrams*, 126/593, 55 S. E. 497.

Advancement of money to maker of goods, and holding of title as security until payment by purchaser; liability under contract. *National Bank*, 106/221, 32 S. E. 20.

Agent; creditor must take notice of limited authority. *Americus Oil Co.*, 114/624, 40 S. E. 780.

Of creditor in procuring security, debtor was not. *Abbeville Trading Co.*, 3 A. 140, 59 S. E. 450.

Account of, liability of his firm to a principal not shown by. *Smith*, 101/137, 28 S. E. 653.

Representation and concealment by, when not binding on claimant. *Peoples' National Bank*, 114/603, 40 S. E. 717.

To buy goods for husband, wife not shown to be. *Wolff*, 105/153, 31 S. E. 425.

Agreement not enforced for summary foreclosure of title-retention note as mortgage. *Wynn*, 139/765, 78 S. E. 185.

Antecedent debt; mortgagee on basis of bona fide purchaser, as to property fraudulently obtained by mortgagor. *Mashburn*, 117/568, 44 S. E. 97.

Apparent ownership, extension of credit on faith of, as affecting real owner. *Mizell Live-Stock Co.*, 14 A. 593, 81 S. E. 904.

Application of payment by lienholder as affecting other creditor. *Peoples Bank*, 116/831, 43 S. E. 269, 94 Am. St. R. 144.

Effect of debtor's omission to direct and of creditor's omission to apply. *Austin*, 122/440, 50 S. E. 382.

First to debt in excess of guarantor's liability. *Holmes*, 141/44, 80 S. E. 313.

On oral agreement, otherwise than written contract; effect. *Riverside Milling Co.*, 141/579, 81 S. E. 892.

On collections for partnership debt, to debt of partner, when unlawful *Bank of LaGrange*, 101/134, 28 S. E. 644.

Arrest avoidable by showing receipt for payment, no defense to false imprisonment. *Gordon*, 114/354, 40 S. E. 229.

Assignee for creditors, removal of, by appointment of receiver, was erroneous. *Dozier*, 101/178, 28 S. E. 612.

Misfeasance or nonfeasance, remedy of creditors for, by suit on bond. *Dozier*, 101/178, 28 S. E. 612.

Assignment or transfer illegal, by insolvent debtor reserving benefit, though assignee without notice. *McKenzie*, 118/728, 45 S. E. 610.

For creditors covered goods nominally held under del credere commission. *Snelling*, 104/366, 30 S. E. 863.

Not made by unaccepted check. *Reviere*, 120/716, 48 S. E. 122.

Of accounts, by entry on ledger. *Lydia Pinkham Co.*, 108/138, 33 S. E. 945.

Of collateral security for prior debts infected with usury. *Atlas Tack Co.*, 101/391, 29 S. E. 27.

Of choses in action by insolvent corporation. *Atlas Tack Co.*, 101/391, 29 S. E. 27.

Of insurance policy; rights of creditors. *Atlanta Savings Bank*, 122/692, 51 S. E. 38.

Of non-negotiable paper, subject to equities between assignor and debtor. *Third National Bank*, 114/890, 40 S. E. 1016.

Of senior mortgage held to protect junior judgment lien, when not compelled on tender. *Tillman*, 104/687, 30 S. E. 949, 69 Am. St. R. 192.

Partial; enforcement in equity, not at law. *Central of Ga. Ry. Co.*, 1 A. 240, 57 S. E. 1002.

To secure debt, passing title to personality. *Joiner*, 127/203, 56 S. E. 304.

Void as to unearned wages. *Central of Ga. Ry. Co.*, 1 A. 240, 57 S. E. 1002.

Assumption of note by debtor's grantee, holder's remedy in equity. *Union City Realty Co.*, 138/703, 76 S. E. 35.

Attachment, removal of, discretion not abused. *Dunlap Hardware Co.*, 101/645, 28 S. E. 974.

Attorney's fees for bringing fund into court, not allowed out of excess payable to debtor. *Peppers*, 143/239, 84 S. E. 477.

Bank check as payment; liabilities. *Lester-Whitney Co.*, 1 A. 244, 58 S. E. 212.

Check as payment; when title passes. **Watt-Harley-Holmes Co.**, 1 A. 646, 57 S. E. 1033.

Check mailed; effect of garnishment. **Watt-Harley-Holmes Co.**, 1 A. 646, 57 S. E. 1033; **Parker-Fain Grocery Co.**, 1 A. 628, 57 S. E. 1074.

Collusion of, with depositor to mislead creditor by keeping account in fictitious name. **Bank of Lawrenceville**, 129/588, 59 S. E. 291.

Insolvent; collections mingled with its funds not impressed with trust in receiver's hands. **Citizens Bank**, 144/490, 87 S. E. 399.

Bankruptcy adjudication did not extinguish right to maintain pending petition by creditor. **Johnson**, 112/450, 37 S. E. 766.

Trustee vested with creditor's rights of action as to property fraudulently transferred. **Bealsey**, 144/377, 87 S. E. 293.

Bar not raised by lapse of time, if law hinder creditor from proceeding. **Smith**, 1 A. 344, 57 S. E. 1011.

Of limitation, when no legal obstacle to conveyance for purpose of paying debt. **Lane**, 145/810, 89 S. E. 1083.

Bidder at judicial sale, allowed to pay part by crediting his claim against administrator, not liable to suit by sheriff. **Coker**, 104/482, 31 S. E. 411.

Bill of sale as security; instrument passed title. **Beleryby**, 105/477, 30 S. E. 425.

Bills made against husband, explanation of, in suit against wife. **Bellerby**, 105/477, 30 S. E. 425.

Bona fide purchaser, judgment creditor is not. **Kerchner**, 106/439, 32 S. E. 351.

Bona fides of sale by debtor. **Cronan**, 107/295, 33 S. E. 56.

Bond creates no relation of, before breach. **Hurat**, 110/36, 35 S. E. 294.

Official, no extension of credit by taking. **Hurat**, 110/36, 35 S. E. 294.

Broker's pledgee bona fide and without notice prevails under bill of lading. **Commercial Bank**, 120/74, 47 S. E. 589, 65 L. R. A. 443.

Building and loan association, preferred stockholder is creditor of. **Cottingham**, 114/940, 41 S. E. 72; **Cashen**, 114/983, 41 S. E. 51.

Bulk sale of merchandise stock, validity of. **South Georgia Grocery Co.**, 12 A. 213, 77 S. E. 6.

Invalid as not complying with act of 1903. **Cooney**, 133/511, 66 S. E. 257, 25 L. R. A. (N. S.) 758; **Right**, 137/493, 73 S. E. 740; **Jaques & Tinsley Co.**, 4 A. 582, 62 S. E. 90; **Hagan Supply Co.**, 11 A. 456, 75 S. E. 672; **Carstarphen Warehouse Co.**, 124/544, 52 S. E. 598.

When not void for omission to name and notify one creditor. **International Silver Co.**, 140/10, 78 S. E. 609, 45 L. R. A. (N. S.) 492; 12 A. 812, 78 S. E. 610.

Invalid; sale of fractional interests at different times. **Virginia-Carolina Chemical Co.**, 12 A. 661, 78 S. E. 51.

Not complying with act of 1903, voidable. **Parham**, 127/303, 56 S. E. 460; **Sampson**, 127/454, 56 S. E. 488, 9 Ann. Cas. 331.

Non-application of act of 1903 to settlement with all creditors. **Stovall Co.**, 10 A. 498, 73 S. E. 761.

Notice to creditors required by act of 1903. **Wyone Shoe Co.**, 136/192, 71 S. E. 1.

Cancellation of conveyance; legal representative of deceased debtor a necessary party defendant. **Gibbs**, 147/404, 94 S. E. 235.

Of deed as void conveyance; right of action in bankruptcy trustee; not in creditors. **Wright**, 146/400, 91 S. E. 412.

Collateral, liability of creditor holding open account as. **General Supply Co.**, 138/219, 75 S. E. 135.

Right to proceed against surety not lost by not properly selling. **Timmons**, 138/69, 74 S. E. 784.

Effect of holding, on administration of assets in receivership. **Citizens &c. Bank**, 147/74, 92 S. E. 868 L. R. A.

1918B, 1021; *Collins*, 147/273, 93 S. E. 880.

Holder not delayed by applying remedy of marshaling assets, etc. *Hanesley*, 147/96, 92 S. E. 879.

Judgment with special lien on, by way of cross-action. *Hardman*, 147/617, 95 S. E. 209.

Measure of damages on conversion.

Sued on; no credit for value of notes indorsed for collection. *Jones*, 141/32, 80 S. E. 306.

Collusive exchange of properties to defeat debt; allegation not supported by evidence. *McGarity*, 148/146, 95 S. E. 968.

Judgment, property covered by, subject to claim of ward. *Byrom*, 102/566, 31 S. E. 560.

Scheme open to attack. *Home Mixture Guano Co.*, 148/568, 97 S. E. 637.

Composition, consideration necessary to. *Williams-Thompson Co.*, 10 A. 251, 73 S. E. 409. Estoppel to recede from. *Stovall*, 10 A. 498, 73 S. E. 761.

Agreement, defective plea as to. *Smith*, 108/211, 33 S. E. 857.

Agreement void for misrepresentation or concealment of material fact. *Burgess*, 128/423, 57 S. E. 717.

Confirmed and case dismissed, debtor discharged in bankruptcy though creditor did not prove claim. *Glover Grocery Co.*, 116/216, 42 S. E. 347.

Debtor released on payment of certain proportion; each creditor bound. *Stewart*, 103/290, 30 S. E. 35.

Fraudulent by secret arrangement; debtor's right against creditor receiving excess. *Brown*, 111/404, 36 S. E. 813.

Offer of, did not bind where not accepted in reasonable time. *Traylor*, 2 A. 80, 84, 58 S. E. 371.

Condition of extending credit not met; right of seller to sue. *Equitable Mfg. Co.*, 119/100, 45 S. E. 962.

Consideration of assumption of another's debt, by inducing to relinquish lien. *Bluthenthal*, 106/424, 32 S. E. 344.

Contract for creditor to operate debtor's business and collect income, rights

under. *Mohr-Weil Lumber Co.*, 109/579, 34 S. E. 1005.

To extend time, damages on breach; gratuitous promise no contract. *Hendricks*, 118/139, 44 S. E. 835.

To pay debt of other person, no basis of action at law by promisor's creditor. *Union City Realty Co.*, 138/703, 76 S. E. 35.

Contribution to satisfy lien. *Merchants National Bank*, 107/535, 33 S. E. 860.

Conversion of notes held for collection, by including them in assignment. *Holmes*, 110/861, 36 S. E. 251.

Conveyance after attachment, issued, incompetent as evidence. *Hobbs*, 103/1, 30 S. E. 257.

By husband to wife, admissibility of testimony on issue raised by creditor as to. *Kirkman*, 145/452, 89 S. E. 411.

By husband to wife to defraud or hinder; rulings on instructions to jury. *Gaskins*, 145/806, 89 S. E. 1080; *Lane*, 145/810, 89 S. E. 1083.

By insolvent debtor with actual intent to defraud creditors, avoidable. *Almand*, 148/369, 96 S. E. 962; *See Yates*, 148/246, 96 S. E. 427.

By insolvent, of his equity partly unpaid for, not void as to other creditors; but how considered. *Lowenherz*, 144/560, 87 S. E. 778.

By intestate to defraud. No recovery by his administrator, to pay debts. *Boswell*, 147/734, 96 S. E. 247.

To defeat creditor; cause of action; error in charge to jury. *Norton*, 148/652, 98 S. E. 76.

To defeat creditors; issue for jury in claim case. *Germania Bank*, 145/560, 89 S. E. 489.

To defeat creditors, set aside. *Krueger*, 148/429, 96 S. E. 867; *Mitchell*, 148/596, 97 S. E. 528.

To defeat creditors, voidable. *Beasley*, 144/379, 87 S. E. 293.

To defraud creditors; circumstances considered as showing intent. *Nelson*, 129/37, 58 S. E. 697.

To defraud creditor; law not applied to deed made four years before debt arose. *Mitchell*, 148/244, 96 S. E. 430.

To delay, hinder, or defraud creditors, avoidance of. *Evans*, 101/152, 28 S. E. 645.

To hinder, delay, and defraud, attack of, without equitable amendment, in claim case. *Ford*, 112/853, 38 S. E. 373.

To hinder, delay, or defraud creditors, as part of homestead. *Kiser*, 102/429, 30 S. E. 967, 66 Am. St. R. 184.

Voluntary, by insolvent husband; record in three months not essential to validity. *Coleman & Co.*, 102/576, 28 S. E. 973.

Voluntary, not shown void by facts. *Wellmaker*, 113/1155, 39 S. E. 475.

Voluntary; gift presumed where husband paid for land and took title to wife. *Jackson*, 129/716, 59 S. E. 776.

Voluntary; taking deed as trustee to pay what he erroneously supposes he owes beneficiary. *Cohen*, 105/339, 31 S. E. 205.

Voluntary, valid as against creditor. *Cohen*, 105/339, 31 S. E. 205.

Voluntary, when void as to creditors. *Ernest*, 107/61, 32 S. E. 898.

See catchwords, *Fraudulent Conveyance*.

Corporation acquiring property and absorbing other corporation or partnership, not liable for their debts. *Atlanta & Ry. Co.*, 128/392, 56 S. E. 482, 11 L. R. A. (N. S.) 1118; *Culberson*, 127/599, 566 S. E. 765, 9 L. R. A. (N. S.) 411, 9 Ann. Cas. 507; *Greenberg-Miller Co.*, 138/729, 75 S. E. 1120.

Insolvent; assets a trust fund for creditors. *Atlas Co.*, 111/706, 36 S. E. 939.

Insolvent; stockholder's liability. *Walters*, 3 A. 73, 59 S. E. 452.

Liability of persons who organize and transact business in name of. *Wells*, 144/548, 87 S. E. 661.

Liability of stockholders who divert assets of. *Cadwalader*, 137/140, 72 S. E. 903; *Abrams*, 137/143, 72 S. E. 903.

Organized and operated before minimum capital subscribed; liability ex contractu, not ex delicto. *Howard*, 142/789, 83 S. E. 852.

Organizers' liability on contracts made before charter and organization. *Wells*, 143/732, 85 S. E. 873.

Organizers' liability to creditors; action remedial; not penal; not abated by death. *Ham*, 146/442, 91 S. E. 483.

Organizers' liability to creditors, on doing business before minimum capital subscribed. *Rigbers*, 138/120, 74 S. E. 834.

Organizers transacting business before minimum capital subscribed, liable in damages on breach of contract. *American Ice Cream Co.*, 184/624, 97 S. E. 678. Bank organizers liable. *Smith*, 148/764, 98 S. E. 466; see *Lowe*, 148/388, 96 S. E. 1001.

Creditors of, had equity superior to that of stockholders. *Fitzpatrick*, 133/322, 65 S. E. 859, 25 L. R. A. (N. S.) 150. Of defrauded stockholder. *Gress*, 135/60, 68 S. E. 834, 31 L. R. A. (N. S.) 900.

Creditors' right as to unpaid stock subscriptions. *Torras*, 108/346, 33 S. E. 989.

Debtor of, issue whether grantee of land became. *Becker*, 138/636, 75 S. E. 1122.

Director not protected on loan not authorized. *Monroe Mercantile Co.*, 108/449, 34 S. E. 176.

Directors; right of protection on their guaranty. *Rylander*, 108/111, 34 S. E. 348.

Intent of, to defraud, presumption that president knew. *Nelson*, 129/37, 58 S. E. 697.

Stockholders not directly liable in action by creditor, before judgment against corporation. *Lamar*, 101/270, 28 S. E. 286.

Want of existence of, or defects in creation, etc., not set up by stockholders against creditor. *Torras*, 108/345, 33 S. E. 989.

Assets, judgment held not entitled to priority in distribution of funds from. *Lang*, 101/343, 28 S. E. 860.

Assets; sale or exchange for stock in other corporation, how attacked.

Fourth National Bank, 12 A. 864, 76 S. E. 1057.

Stock under by-law lien; effect on purchaser bona fide. **Owens**, 122/521, 50 S. E. 379.

Costs and expenses not charged to fund from sale of mortgaged property in hands of receiver. **Bradford**, 103/753, 30 S. E. 579.

Criminal process to collect debt, not lawful. **Jordan**, 143/143, 84 S. E. 549, L. R. A. 1915D, 1122; **Smith**, 143/839, 85 S. E. 1034; **Mulkey**, 1 A. 521, 57 S. E. 1022; **Patterson**, 1 A. 782, 58 S. E. 284.

Decedent, issue of indebtedness to, not triable by ordinary. **Durham**, 107/285, 33 S. E. 76.

Leaving no child and owing no debt; need of administrator to maintain personal action. **Brown**, 146/123, 90 S. E. 856.

Administrator of, could not recover for creditors, against transferee of property conveyed in fraud. **Perry**, 137/427, 73 S. E. 656.

Administrator of, not liable where credit for funeral expenses extended to third person. **Kenyon**, 120/607, 48 S. E. 124, 1 Ann. Cas. 169.

Debt of, discharged by executor's payment; not purchased by him. **Walker**, 117/734, 45 S. E. 387.

Estate of, priority of creditor's claims against. **Third National Bank**, 135/324, 69 S. E. 482.

Estate of, right of holders of claims to set up defense where administrator does not. **Pendley**, 129/69, 58 S. E. 653; **Harria**, 129/83, 58 S. E. 1038, 12 Ann. Cas. 475.

Declarations of debtor to show good faith in conveyance. **Hayes**, 105/299, 31 S. E. 166; **Cohen**, 105/339, 31 S. E. 205.

Default, debtor not in, without opportunity to comply. **Provident &c. Society** 124/399, 52 S. E. 289.

Defenses personal to debtor, not available to creditor. **Williams**, 122/180, 50 S. E. 52, 106 Am. St. R. 100.

Delay, hinder, or defraud creditors, to be stated disjunctively. **Evans**, 101/152, 28 S. E. 645.

Incidental; preference not invalid. Aliter if purpose be to delay. **Monroe Mercantile Co.**, 108/459, 34 S. E. 176.

Delivery and acceptance complete; debtor moved cotton to public place designated by creditor. **Daniel**, 106/91, 31 S. E. 734.

Deposit general, a loan. **Lamb**, 108/611, 34 S. E. 160.

Of money in bank creates relation of. **Fulton County**, 146/447, 91 S. E. 487.

Devises could not defeat levy by surrender of land to executor. **Crumpler**, 114/570, 40 S. E. 808.

Discharge effected by acceptance of partner's notes in settlement of partnership notes held as collateral. **Fisher**, 103/557, 29 S. E. 759.

In bankruptcy extinguished. **Moore**, 126/116, 54 S. E. 810, 7 Ann. Cas. 971.

Of provable and unsecured debt in bankruptcy. **Richards**, 138/583, 75 S. E. 602.

Equitable and legal remedies under act of 1887. **Booth**, 122/333, 50 S. E. 173.

Action for cancellation and judgment; venue and parties. **Fourth National Bank**, 143/137, 84 S. E. 546; **Bryant**, 143/217, 84 S. E. 739.

Extraordinary remedies, when not afforded. **Booth**, 122/333, 50 S. E. 173.

Extraordinary relief not afforded to creditor without lien. **Cunningham**, 135/249, 69 S. E. 101; **Williams-Rankin Co.**, 135/424, 69 S. E. 554; **Ross**, 148/147, 96 S. E. 1; **Cooleewahoe Co.**, 148/211, 96 S. E. 131.

Intervention apart from trader's act; relief without receivership. **Reynolds &c. Co.**, 118/254, 45 S. E. 235.

Lien not given to administrator's lender. **Putney**, 142/118, 82 S. E. 519.

Relief against non-resident corporation seeking to sell land under fraudulent deed. **Leonard**, 102/536, 29 S. E. 147.

Relief to grantor, without injunction. **Carstarphen Warehouse Co.**, 124/544, 52 S. E. 598.

Remedy to cancel void composition; rescission or tender, when not required. **Burgess**, 128/423, 57 S. E. 717.

Right of recovery on bond in lieu of property, under decree, rights of creditors, etc. **Claffin Co.**, 106/202, 32 S. E. 108.

Right under extension of credit on faith of apparent ownership. **Parker**, 107/657, 34 S. E. 365.

Seizure, apart from statutory provision; none in behalf of unsecured creditors. **Guilmartin**, 101/565, 29 S. E. 189.

Estoppel, after judgment subjecting land, to attack deed for usury. **Miller**, 133/187, 65 S. E. 410.

By admission of liability. **Wolff**, 105/153, 31 S. E. 425.

By statement of amount of debt, made to one buying from debtor subject to encumbrance. **Fulton Building &c. Asso.**, 103/376, 29 S. E. 932.

By suing one instead of another person. **Wolff**, 105/153, 31 S. E. 425.

Not raised against partner with opportunity to know of misapplication to pay copartner's debt. **Murphey**, 122/715, 50 S. E. 1004.

Of debtor not binding on creditor; **Equitable Life Ins. Co.**, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

Of reclaiming goods; by attaching and causing their sale. **Fowler**, 137/40, 72 S. E. 407.

Executor's decree to mortgage estate did not bind creditor not a party. **Hughes**, 116/663, 42 S. E. 1035.

Exempted property, notice to creditor that land was bought with proceeds of, not shown. **Dawson Grocery Co.**, 137/846, 74 S. E. 796.

Goods not subject for price of others mingled with them. **Mitchell**, 114/199, 39 S. E. 935.

Exemption applied for pending suit; payment by garnishee at his peril. **Taylor**, 104/169, 30 S. E. 675.

Extension of credit on faith of apparent ownership; right to subject property. **Ross**, 113/1047, 39 S. E. 471. See **Burt**, 113/1143, 39 S. E. 414.

Of time, as consideration of contract of indorsement of note in renewal. **Hollingshead**, 104/250, 30 S. E. 728.

Of time; need of fully meeting conditions. **Strickland**, 141/565, 81 S. E. 886.

Fraud and conspiracy of debtor and transferees; petition not demurrable. **Peoples**, 108/527, 34 S. E. 5.

By pretending existence of partnership. **Bank of Lawrenceville**, 129/585, 59 S. E. 291.

In conveyance; burden of proof. **Buttrill Guano Co.**, 147/11, 92 S. E. 521.

In deed to brother not shown. **Cowart**, 101/1, 29 S. E. 270.

In obtaining stock subscription, when not available against corporation's creditors. **Wilkes**, 142/458, 83 S. E. 89.

Intent to delay as. **Monroe Mercantile Co.**, 108/457, 34 S. E. 176.

Motive of debtor in postponing payment, when immaterial to issue. **Monroe Mercantile Co.**, 108/449, 34 S. E. 176.

Not shown by gift of services by insolvent debtor. **Brand**, 133/750, 66 S. E. 935.

Rescission of stock subscription for, not obtained at loss of corporation's creditors. **Chappell**, 145/720, 89 S. E. 777; **Empire Ins. Co.**, 145/818, 89 S. E. 1085.

Right to rescind for, superior to that of purchaser bona fide to pay pre-existing debt. **Mize**, 138/503, 75 S. E. 629.

Security deed, fraud and usury in; need of tender before equitable relief. **Craft**, 135/521, 69 S. E. 742.

Upon creditors; evidence of intent inadmissible without showing notice to transferee of note before maturity. **Oliver**, 130/72, 60 S. E. 254.

Upon creditors; inadequate plea not showing innocence of defendant. **Bank of Lawrenceville**, 129/582, 59 S. E. 291.

Fraudulent and collusive suit, judgment in, no basis of prescriptive title. **Wardlaw**, 106/34, 31 S. E. 785.

Agreement, grantor bound, and can not enforce convinous agreement with grantee. **Glover**, 132/796, 65 S. E. 64.

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Conspiracy to prevent subjecting personalty, equitable relief against. **Johnson**, 112/449, 37 S. E. 766.

Debtor, attachment against; right to contest by setting up security title in third person. **Smith**, 145/741, 89 S. E. 762.

Debtor, attachment against, supported. **Price**, 118/261, 45 S. E. 225.

Delivery of property not paid for, to satisfy wages, not so held. **Hargrove**, 112/134, 37 S. E. 89, 81 Am. St. R. 24.

Grantee, innocent purchaser from, protected. **Beasley**, 144/380, 87 S. E. 293.

Intent, grantee having equity in property not affected by. **Hunt**, 128/417, 57 S. E. 489. Grantee not bound to exercise diligence to discover. **Spence**, 128/725, 58 S. E. 356.

Intent in conveyance pending suit. **Cowart**, 101/1, 29 S. E. 270. Mortgage to defraud creditors. **Evans**, 101/152, 28 S. E. 645.

Intent of officer of insolvent bank; statutory presumption. **Youmans**, 7 A. 110, 66 S. E. 383.

Representation as to property covered by mortgage, effect of. **Carter**, 104/570, 31 S. E. 407.

Representation of solvency, remedy of seller on discovery. **Fowler**, 137/40, 72 S. E. 407.

Representations as basis of credit; effect of lapse of time before sale on faith thereof. **Waldrop**, 114/613, 40 S. E. 830.

Representations to obtain credit; right to affirm or rescind sale. **Bacon & Co.**, 117/207, 43 S. E. 482; **Mashburn**, 117/567, 44 S. E. 97.

Sale subject to attack by creditors without lien. **Booth**, 122/333, 50 S. E. 173.

Sale to hinder and delay; effect of inadequate consideration. **Oglesby**, 118/203, 44 S. E. 990.

Scheme, petition attacking, sustained. **Moody**, 133/741, 66 S. E. 908.

Scheme, victimized party to, has no relief in equity. **Bagwell**, 116/464, 42 S. E. 732.

Transfer of mortgage to defeat judgment. **Wynn**, 135/102, 68 S. E. 1022.

Transfer to hinder creditors; when not open to attack by later creditors. **Jowers**, 10 A. 297, 73 S. E. 415.

Fraudulent conveyance; action by grantor's creditor against grantee alone, not authorized. **Glover**, 132/796, 65 S. E. 64.

Admissibility of evidence. Intent unknown to grantee. **Ernest**, 107/61, 32 S. E. 898.

By debtor to his wife; slight circumstances sufficient. **Manley**, 128/351, 57 S. E. 705.

By former partner, irrelevant on traverse of attachment. **Hobbs**, 103/1, 30 S. E. 257.

By husband to wife; evidence of grantee taking with notice of invalidity. **Smith**, 136/809, 72 S. E. 345.

By insolvent mother not so held. **Cooley**, 111/439, 36 S. E. 786.

By tenant to avoid rent; landlord's remedy. **Helmken**, 138/200, 75 S. E. 3.

Courts do not aid parties to. **Sewell**, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Equitable relief against, denied to creditor already proceeding at law. **Cunningham**, 135/249, 69 S. E. 101.

Evidence and instruction to jury. **Hinkle**, 133/255, 65 S. E. 427; **Brand**, 133/750, 66 S. E. 935.

By husband to wife; erroneous instruction. **Varn**, 137/300, 73 S. E. 507.

Not void as to grantee. **Hollis**, 103/76, 29 S. E. 482; **Lamkin**, 103/631, 30 S. E. 596.

Right to subject property to dormant judgment. **Kruger**, 111/383, 36 S. E. 794.

To defeat creditors; admissibility of evidence. **Varn**, 142/243, 82 S. E. 641.

To defeat creditors, issue as to, on claim by debtor's wife. **Warren**, 145/503, 89 S. E. 520.

To defeat creditors; petition how far subject to demurrer. **Maynard**, 138/549, 75 S. E. 582; **Shepherd**, 138/555, 75 S. E. 585.

To defeat creditors, set aside. *Varn*, 142/243, 82 S. E. 641. Evidence of land ownership and keeping title in other person. *Webb*, 142/423, 83 S. E. 99.

To defeat debt by judgment, avoided. *Hope*, 142/310, 82 S. E. 929.

To defraud creditors, not shown. *Fourth National Bank*, 12 A. 864, 76 S. E. 1057.

To hinder creditor, not shown by deed of mother and son to other son. *Hatcher*, 142/193, 82 S. E. 513.

To wife of insolvent debtor by person holding title as security. *Rushing*, 105/166, 31 S. E. 154.

Validity of, as between parties. *McDowell*, 107/812, 33 S. E. 709, 73 Am. St. R. 155; *St. Paul Fire & C. Ins. Co.*, 123/786, 39 S. E. 483.

Voidable, not absolutely void. *Jarrett*, 138/202, 74 S. E. 1092.

Void as against creditors. *Lane*, 140/415, 78 S. E. 1082; *Ford*, 140/676, 79 S. E. 576.

With intent merely to delay. *Monroe Mercantile Co.*, 108/449, 34 S. E. 176.

Garnishment control of choses in action does not reach what debtor could not recover. *Holmes*, 1 A. 338, 58 S. E. 281.

Gift by insolvent debtor, to creditor's injury, not shown. *Nation*, 3 A. 85, 59 S. E. 330.

By insolvent debtor, void as to existing creditors, though no intent to defraud. *Lane*, 140/415, 78 S. E. 1082.

By parent who retains possession, validity of, as against creditors. *Ross*, 113/1047, 39 S. E. 471.

Guarantor sued without joining principal debtor or showing insolvency. *Penn. Tobacco Co.*, 109/428, 34 S. E. 679.

Liability of, on letter of credit. *Holmes*, 141/44, 80 S. E. 313.

Of land valuation, discharge of, on facts. *Mutual Loan & C. Co.*, 112/729, 38 S. E. 63.

Guaranty, limited liability of, did not prevent further extension of credit. *Carson*, 137/640, 74 S. E. 52, Ann. Cas. 1913 A. 1086.

Husband, conveyance by, to wife, issue as to fraud in. *Hinkle*, 133/255, 65 S. E. 427.

Conveyance by, to pay debt to wife with compound interest; avoidance by creditors. *Hollis*, 106/15, 31 S. E. 783.

Conveyance by, to wife to pay debt barred by limitation; whether valid. *Lane*, 145/810, 89 S. E. 1083.

Creditor and vendee of, was not liable to wife for proceeds of land conveyed by her. *Buchannon*, 135/393, 69 S. E. 543.

Debt of, crop from labor of wife and children held not subject to. *Sams*, 110/648, 36 S. E. 104.

Debt of, estoppel of wife to assert equitable title where credit extended on faith of ownership. *Ford*, 140/670, 79 S. E. 576.

Debt of, estoppel of wife to set up that claim was. *Wolff*, 105/153, 31 S. E. 425.

Debt of, his share in deceased wife's estate subject to, though he renounce it. *Payton*, 110/262, 34 S. E. 305.

Debt of, invalidity of wife's deed to pay. *Taylor*, 112/330, 37 S. E. 408.

Debt; liability of creditor knowingly receiving payment with wife's money or conveyance. *Central Bank*, 135/231, 69 S. E. 111; *Parrott*, 135/330, 69 S. E. 552; *Bank of Waynesboro*, 135/643, 70 S. E. 244. See *Gaskins*, 135/368, 69 S. E. 476; *Buchannon*, 135/392, 69 S. E. 543.

Debt of, liability of wife for money borrowed to pay, to remove encumbrance from her property. *Taylor*, 106/238, 32 S. E. 153.

Debt of, right of wife to cancel her conveyance given to pay; allegations on demurrer. *Hickman*, 145/368, 89 S. E. 330.

Debt of, validity of wife's conveyance to pay, was not involved. *McClellan*, 135/95, 68 S. E. 1025.

Debt of, validity of wife's note for money borrowed to pay. *Chastain*, 111/889, 36 S. E. 967.

Husband—(Continued).

Debt of, void sale of wife's property to pay. *Grant*, 107/804, 33 S. E. 671.

Debt of, wife's contract to pay fine was not undertaking to pay. *Hall*, 138/734, 75 S. E. 1132.

Debt of, wife's conveyance partly to pay, inhibited. *Ginsberg*, 145/815, 89 S. E. 1086.

Debt of, wife's land not subjected to, though his name appeared as joint grantee. *Roberts*, 112/147, 37 S. E. 179.

Debt of, wife's sale to raise money for paying, when valid. *Nelms*, 103/745, 30 S. E. 572.

Debt of, wife's secret equity did not prevail against. *Parker*, 107/650, 34 S. E. 365; *Dill*, 118/208, 44 S. E. 989.

Evidence on issue of notice of wife's ownership. *Paul*, 118/358, 45 S. E. 387.

Having same initials as wife; issue of ownership. *Russell*, 120/38, 47 S. E. 528.

Petition of creditor of, for equitable relief, was subject to demurrer. *Hutchinson*, 130/536, 61 S. E. 130.

Purpose of, to defraud creditors, did not invalidate wife's title as to her grantor. *Flannery*, 112/648, 37 S. E. 878.

Sale by, to wife, while insolvent, valid if not made to delay or hinder creditors. *Hadden*, 138/406, 75 S. E. 333.

Wife's conveyance to him, for his assumption of her debt, was not valid without order authorizing. *Flannery*, 112/648, 37 S. E. 878.

Wife may be secured creditor of. Re-conveyance by her is not sale to him. *Turner*, 133/467, 66 S. E. 160.

Illegal contract, relief against, in behalf of party to it. *Booth*, 132/100, 63 S. E. 907.

Independent contractors, landowner not liable for material sold to. *United Painting &c. Co.*, 137/307, 73 S. E. 492.

Injunction and receivership, when denied to creditors with and without liens.

Barnesville Mfg. Co., 118/664, 45 S. E. 455; *McKenzie*, 118/728, 45 S. E. 610.

Against disposal of property, not granted to creditor without lien, as a general rule. *Arthur*, 146/719, 92 S. E. 205.

Insolvency alleged by averment of conveyance of all debtor's property. *Helmken*, 138/200, 75 S. E. 3.

Administration of assets of insolvent partnership, on death of solvent member. *Johnson*, 102/350, 30 S. E. 507.

Admissibility of evidence. What not sufficient as notice of. *Hawes*, 124/568, 571, 52 S. E. 922.

Defined. *Griffin*, 15 A. 520, 83 S. E. 891.

Dividend to secured creditor is on debt reduced by amount of collateral. *Citizens &c. Bank*, 147/74, 92 S. E. 868, L. R. A. 1918B, 1021; *Collins*, 147/273, 93 S. E. 880.

Evidence not showing that creditor had notice of. *Hawes*, 124/568, 52 S. E. 922.

Facts not showing notice of, to creditor who took renewal notes, etc. *Collins*, 147/273, 93 S. E. 880.

Inferable from meager excess of assets. *McGhee*, 133/652, 66 S. E. 776.

Insufficient allegation and proof. *McKenzie*, 118/728, 45 S. E. 610.

Notice of, not charged to pledgee of collateral security. *Booth*, 132/100, 63 S. E. 907.

Of bank as affecting forwarders of bills for collection and remittals. *Ober & Sons Co.*, 118/396, 45 S. E. 382, 98 Am. St. R. 118.

Of corporation from sale of property and appropriation of proceeds by stockholders, leaving no assets. *Tatum*, 136/791, 72 S. E. 236, Ann. Cas. 1912D, 216.

Of non-resident judgment creditor, when no cause for injunction in favor of resident debtor. *Parker-Hensel Engineering Co.*, 133/696, 66 S. E. 800.

Of vendor, as ground of defense; need of distinct allegation. *Mallard*, 106/503, 32 S. E. 588.

One with enough to pay his debts is not insolvent. *Rogers*, 105/446, 31 S. E. 438, 70 Am. St. R. 50; *Cohen*, 105/348, 31 S. E. 205.

Bankruptcy adjudication as affecting insolvency proceeding. *Merry*, 119/643, 46 S. E. 861.

Lien creditor's equitable action not an insolvency proceeding; not affected by later bankruptcy. *Virginia-Carolina Chemical Co.*, 139/669, 78 S. E. 27.

Showing of, by means other than entry of nulla bona. *Harrell*, 112/711, 38 S. E. 56.

Test of. *Fisher*, 113/856, 39 S. E. 305.

Test of. Indorsement, when not counted. Valuation of property, time of. *Ayers*, 111/864, 36 S. E. 946.

Unnecessary allegation in petition to subject equitable assets. *Harp*, 108/180, 33 S. E. 998.

Insolvent banking corporation; stockholders' liability in suit by receiver. *Moore*, 106/556, 32 S. E. 647.

Bank; rights of creditors. *Booth*, 132/100, 63 S. E. 907.

Bank, void conveyance by. *Clarke*, 107/565, 33 S. E. 802.

Corporation and stockholders; equity jurisdiction to marshal and distribute assets, ascertain liabilities, etc. *Boyd*, 104/804, 31 S. E. 29.

Corporation; distribution of assets. *Lang*, 101/343, 28 S. E. 860.

Debtor; no trust impressed on funds in hands of receiver. *Ober & Sons Co.*, 118/396, 45 S. E. 382, 98 Am. St. R. 118.

Debtor's mortgage not invalid, where no notice or reason to suspect purpose to hinder or delay. *Lydia Pinkham Co.*, 108/138, 33 S. E. 945.

Debtor, validity of delivery of money in consideration of support. *Butler*, 101/102, 28 S. E. 615.

Estate; law not changed by inequality and hardships in distribution. *Nix*, 118/345, 45 S. E. 404, 98 Am. St. R. 111.

Insurance corporation; action by trustee for creditors; essential allegation. *Swing*, 124/951, 53 S. E. 269.

Trader; injunction and receivership, allegation and proof of extent of indebtedness. *Maddox*, 107/291, 33 S. E. 58.

Trader; law not applied to head of family in business with exempted goods and proceeds. *Powers*, 113/599, 33 S. E. 969.

Trader; no receivership on petition of creditor partly secured. *Farmers Union Co.*, 13/132, 65 S. E. 291.

Trader, petition not upheld as against. *Branan*, 122/222, 50 S. E. 45.

Trader's act not suspended by bankruptcy law, without proceeding. *Boston Mercantile Co.*, 123/458, 51 S. E. 466.

Trader's property covered by valid mortgages; no receivership. *Atlanta Brewing & Co.*, 101/541, 28 S. E. 1003.

Insurance, failure to prove agreement whereby trustee for creditors claimed equitable title to proceeds of. *Johnson*, 120/767, 48 S. E. 373.

On property fraudulently transferred, when not reached by garnishment. *St. Paul Fire & Ins. Co.*, 113/786, 39 S. E. 483.

Policies were no assets of bankrupt's estate. *Morris*, 110/606, 50 L. R. A. 33, 78 Am. St. R. 129.

Policy proceeds not subjected to debts of insured who assigns them to his wife. *Brooke*, 111/879, 36 S. E. 937.

Company was not debtor to holder of income certificate, under contract therein expressed. *Porter*, 145/787, 89 S. E. 838.

Insurable interest of creditor in debtor's life. *Exchange Bank*, 104/446, 31 S. E. 459, 44 L. R. A. 372; *Morris*, 109/12, 34 S. E. 378, 46 L. R. A. 506.

Joint debtors, agency not resulting from relation of. *Rogers* 105/446, 31 S. E. 438, 70 Am. St. R. 50.

Judgment in suit commenced after conveyance, grantee not bound by. *Elwell*, 101/496, 28 S. E. 833.

Lien discharged by possession of land four months under conveyance to pay debt. **Johnson**, 138/347, 75 S. E. 245.

Judgment creditor not confined to rule against levying officer. **Barkley**, 3 A. 101, 59 S. E. 440.

Proceeding by, to subject property under lien; debtor a necessary party. **Palmer**, 122/226, 50 S. E. 86.

Labor of debtor, no forcible application to creditor's claim. **Kaiser**, 102/434, 30 S. E. 967, 66 Am. St. R. 184; **Dollar**, 124/522, 52 S. E. 615.

Landlord's lien, tenant's creditor may contest. **Martin**, 127/705, S. E. 995.

Letter of credit, third person takes no benefit of. **Fletcher Guano Co.**, 142/803, 83 S. E. 935.

Levy and sale in bulk instead of lots, restrained on suit of creditor, not debtor. **Reynolds &c. Mortgage Co.**, 118/254, 45 S. E. 235.

Of mortgage execution on any of parcels covered; no right in senior grantee to compel proceeding first against junior. **Brewer**, 144/548, 87 S. E. 657.

Debtor has no interest subject to, as to land conveyed as security, until judgment or redemption. **Virginia-Carolina Chemical Co.**, 139/669, 78 S. E. 27.

Liabilities distinct, on contract, and for obtainment under false pretenses. **Ford**, 140/671, 79 S. E. 576.

Lien, action by creditor without, when not maintained against debtor's grantee. **Graves**, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

Agreement to waive; recovery unwarranted. **Ragan**, 108/663, 34 S. E. 132.

By contract not created in favor of creditor over person interested in land, without his assent. **Atlanta Trust &c. Co.**, 116/916, 43 S. E. 380.

By garnishment not ipso facto prior to claim of other creditor. **Patterson**, 133/701, 66 S. E. 911.

How far effective; not to defeat purchaser's rights acquired before its obtainment. **Southern Flour &c. Co.**,

127/626, 56 S. E. 742, 9 L. R. (N. S.) 853, 9 Ann. Cas. 437.

Of judgment as affected by bankruptcy. **McKenney**, 118/387, 45 S. E. 433.

On two funds; rule and exception as to creditor required to elect. **Mulherin**, 1 A. 153, 58 S. E. 60; **Moore**, 10 A. 197, 73 S. E. 45; **Baumgartner**, 10 A. 224, 73 S. E. 519; **Hodnett**, 10 A. 668, 73 S. E. 1082.

Requirement of one creditor by another to elect between liens; rule not extended. **National Bank**, 110/697, 36 S. E. 265.

Over four months before bankruptcy petition, not affected if creditor did not prove claim. **Philmon**, 116/811, 43 S. E. 48.

Special, without judgment in personam, obtainable over bankruptcy plea. **McCall**, 116/235, 42 S. E. 468.

Without notice of homestead, when protected. **Walden**, 116/301, 52 S. E. 503.

Limitation of action, debt barred by, is not extinguished. **Lane**, 145/810, 89 S. E. 1083.

Barred debt not collected by enforcing equitable lien. **Story**, 110/65, 35 S. E. 314.

Liquidated demand, assent to correctness of account rendered. **Kelley**, 113/365, 38 S. E. 839.

Ranking with promissory note, when open account against decedent was. **Jasper County Bank**, 144/542, 87 S. E. 661.

Marshaling assets; debtor corporation cannot proceed as to its own property. **Bank of Soperton**, 142/34, 82 S. E. 464.

Of insolvent estate; venue of action. **Ragan**, 142/398, 83 S. E. 119.

Marshaling securities; non-application of equitable rule as to. **Union Point Ginney &c. Co.**, 142/727, 83 S. E. 657.

Merger of corporations, municipal or private, as affecting existing creditors. **Walker**, 145/294, 296, 89 S. E. 204; **Marks**, 145/399, 89 S. E. 324.

Mingled funds; no equitable lien arising from trust. *Ober & Sons Co.*, 118/396, 45 S. E. 382, 98 Am. St. R. 118.

Mingled goods; recovery of those identified. *Mitchell*, 114/199, 39 S. E. 935.

Misjoinder of causes and parties defendant, in creditor's equitable suit. *George W. Muller Co.*, 147/106, 92 S. E. 884.

Mortgage, for purchase price; competency of evidence. *Cobb*, 136/255, 71 S. E. 145.

Rights under, not prejudiced by mortgagor's interposition of claim on levy and suffering judgment subjecting the property. *Patapsco Guano Co.*, 106/184, 32 S. E. 136.

To defraud, delay, and hinder; attack not sustained. *Wikle*, 133/269, 65 S. E. 577.

Mortgagee not entitled to insurance money caught by garnishment. *Ennis*, 101/282, 28 S. E. 839.

Takes deed in satisfaction, subject to existing judgment. *McIntyre*, 101/682, 28 S. E. 989.

Municipal charter repealed, property and liabilities transferred; no corporation left for creditors to sue. *Walker*, 145/294, 89 S. E. 204; *Marks*, 145/399, 89 S. E. 324.

Mutual debts extinguished not ipso facto, but on plea in bar. *Nix*, 118/347, 45 S. E. 404, 98 Am. St. R. 111.

Note induced by false promise, when valid as to existing debt. *Bowen*, 2 A. 521, 58 S. E. 784.

Notice by surety to proceed against principal debtor must be written. *Timmons*, 138/69, 74 S. E. 784.

Option to treat act as crime, or as private wrong with remedy in damages, not allowed to creditor. *Fortune*, 139/609, 77 S. E. 818; *Wynn*, 139/769, 78 S. E. 185.

Parent, no illegality in voluntary payment of debt of, by daughter sui juris. *Hickman*, 145/368, 89 S. E. 330.

Release by, of control of minor child to work out debt; agreement not enforceable. *Kidd*, 136/85, 70 S. E. 881.

Pari delicto, corporation debenture holders were not in. *Roney*, 135/1, 68 S. E. 701.

Partnership creditors defined; notice of dissolution. *Bush*, 127/308, 56 S. E. 430, 9 Ann. Cas. 240.

Debts, payment of, ahead of partner's claim. *Bishop*, 138/738, 76 S. E. 63.

Recognition of partners, by acceptance of assignment and mortgage. *Stewart*, 102/839, 30 S. E. 264.

Party to creditors' petition, mortgagee was not, who filed subsequent petition in the cause. *Bradford*, 103/753, 30 S. E. 579.

Payment by surety, rights under; limitation period. *Train*, 141/95, 80 S. E. 554, 49 L. R. A. (N. S.) 950.

Of pre-existing debt to creditor without notice; no recovery by owner of money so used. *Tanner*, 121/524, 49 S. E. 592.

Of pre-existing debt, whether note treated as, depends on express agreement. *Standard Cooperage Co.*, 146/235, 91 S. E. 82.

Pending suit to administer assets, when no bar to independent action by creditors. *Harp*, 108/168, 33 S. E. 998.

Petition alleging no ground for extraordinary relief, and no fraud, not maintained. *Branan*, 122/222, 50 S. E. 45.

For equitable relief by plaintiffs not representing one third of unsecured indebtedness. *Rodgers*, 112/624, 37 S. E. 877.

Not in nature of creditors' bill; no allegation required as to one third of unsecured indebtedness. *Harp*, 108/180, 33 S. E. 998.

Pledgee of collaterals, election by. *Union Point Ginnery &c. Co.*, 142/727, 83 S. E. 657.

Liability of, as to collection and application of proceeds of notes; ordinary diligence required. *Citizens Bank*, 132/771, 65 S. E. 81.

Possession and representation by debtor, no basis for subjecting property of claimant. *Sinclair*, 102/91, 29 S. E. 139.

Pre-existing debt, bank correspondent's check was not, so as to make transfer of note a preference. *Thomas*, 147/437, 94 S. E. 554.

Preference as to assets of insolvent bank; none in favor of county as against other depositors. *County of Glynn*, 101/245, 28 S. E. 604.

By assignment of insurance policy after fire. Avoided by bankruptcy act. *Traders Insurance Co.*, 118/381, 45 S. E. 426; *McKenney*, 118/387, 45 S. E. 433.

By assignment, transfer, and mortgage. *Lydia Pinkham Co.*, 108/188, 33 S. E. 945.

By corporation, validity of, though director incidentally benefited. *Atlas Tack Co.*, 101/391, 29 S. E. 27.

By insolvent debtor. *Hobbs*, 103/1, 30 S. E. 257.

By issue of preferred stock. *Savannah Real Estate & Co.*, 108/281, 33 S. E. 908.

Illegal, by corporation officers. *Tatum*, 136/791, 72 S. E. 236, *Ann. Cas.* 1912D, 216.

In four months of bankruptcy, when not avoidable. *Hawes*, 124/567, 52 S. E. 922.

Not allowed to bank correspondent who sent bill for collection and remittance. *Ober & Sons Co.*, 118/396, 45 S. E. 382, 98 Am. St. R. 118.

Not created by bank's acceptance of certificate, giving notes, and depositing collateral. *Booth*, 132/100, 63 S. E. 907.

Of debt by unrecorded mortgage, when valid as to other creditors. *Dickenson*, 120/632, 48 S. E. 173.

Of directors of insolvent corporation forbidden; rule and exception. *Atlas Tack Co.*, 111/703, 36 S. E. 939.

Of judgment obtained before creditor's action; not as to later judgment on pending actions. *Lubroline Oil Co.*, 104/376, 30 S. E. 409.

Of wife by debtor husband, right of, how limited in exercise. *Krueger*, 148/429, 96 S. E. 867.

Right of insolvent debtor to make. *Hadden*, 138/406, 75 S. E. 333.

Secret, void. *Brown*, 111/404, 36 S. E. 813.

Voidable under bankruptcy act. *Smith*, 3 A. 111, 59 S. E. 315.

Withheld from judgment rendered after receivership. *Lang*, 101/343, 28 S. E. 860.

Priority in distribution of assets, when not given to bailor of notes for collection. *Tiedeman*, 109/661, 34 S. E. 999.

In distribution of bank assets not awarded to depositor of check for collection. *Cronheim*, 10 A. 716, 74 S. E. 78.

State's right to, from assets of insolvent bank. *Central Bank*, 139/55, 76 S. E. 570.

Privity of creditor as to transaction between debtor and other creditor. *Stone*, 107/525, 33 S. E. 861.

Promise to pay debt; equitable remedy of promisee's creditor. *Sheppard*, 137/615, 74 S. E. 245.

Property out of debtor's possession, what required to subject. *Hardy*, 143/703, 86 S. E. 780.

Purchase-money lien not extinguished by transfer of note without endorsement or guaranty. *Gould*, 105/373, 31 S. E. 548.

Receiver's action in behalf of creditor. *Walters*, 3 A. 73, 59 S. E. 452.

In behalf of stockholders (not of creditors), to collect unpaid stock subscriptions, when demurrable. *Greer*, 146/376, 91 S. E. 417.

To restrain suit by creditor, etc., when not maintained. *American Exchange Bank*, 146/580, 91 S. E. 554. See *Georgia Casualty Co.*, 146/597, 91 S. E. 774.

Receivership for assets of insolvent principal, in suit by surety, after default, not before. *Tichenor*, 116/303, 42 S. E. 505; *Sanford*, 116/689, 43 S. E. 61.

For insolvent life insurance co-operative society. *The Anvil*, 116/321, 42 S. E. 495.

For insolvent trader; necessary parties. *Maddox*, 107/291, 33 S. E. 58.

For property exempted to bankrupt, on application for a judgment in rem.

Brooks, 133/191, 65 S. E. 411; see **Miller**, 133/187, 65 S. E. 410.

For property of insolvent debtor. **Young**, 133/699, 66 S. E. 925; **Moody**, 133/741, 66 S. E. 908.

For rents, against insolvent debtor having judgment against his tenant. **Atlas Savings &c. Asso.**, 110/572, 35 S. E. 772.

No cause for, under facts. **Virginia-Carolina Chemical Co.**, 139/670, 78 S. E. 27.

No ground for, that other judgment creditors will claim. **Bush**, 110/472, 35 S. E. 640.

Of joint assets; offer of bond no reason for allowing fund retained. **Whitley**, 105/251, 31 S. E. 171.

Venue of petition for, in county of debtor's residence. **Johnson**, 112/449, 37 S. E. 766.

Reclamation of goods for fraud; right must be promptly asserted. **Fowler**, 137/40, 72 S. E. 407.

Receivership limited to reclaimed goods conveyed in fraud. **Atlanta Brewing &c. Co.**, 101/541, 28 S. E. 1003.

Redemption of land conveyed as security; strict pursuit of statute required. **Dodge**, 138/787, 76 S. E. 52.

Of property conveyed as security by debtor or by other creditor. **Shumate**, 120/397, 48 S. E. 10.

Of land conveyed to secure debt, necessary before levy by other creditor. **First National Bank**, 146/717, 92 S. E. 69.

Relation of debtor and creditor, not shown by a bond, before its breach. **Hurst**, 110/36, 35 S. E. 294.

Not changed into trust by executory promise to invest money loaned. **Krueger**, 148/429, 96 S. E. 867.

Remedies and rights enforceable, and not so. **Williams**, 122/180, 50 S. E. 52, 106 Am. St. R. 106.

At law, not in equity, where debtor's property is covered by mortgage or deed as security. **Dumas**, 147/307, 93 S. E. 894.

At law adequate, extraordinary relief denied. **Carstarphen Warehouse**

Co., 124/544, 52 S. E. 598; **Branan**, 122/225, 50 S. E. 45.

Renewal of debt, no action lies on, if transaction not a renewal. **Lowry National Bank**, 122/489, 50 S. E. 396.

Representations of solvency; rescission where credit extended some months later. **Newman**, 107/95, 32 S. E. 943.

To obtain credit, as affecting assignment of life insurance. **Brooke**, 111/879, 36 S. E. 937.

Reservation of interest by insolvent guarantor, invalid as to creditors. **Gibson**, 130/250, 60 S. E. 565.

Sale bona fide, not invalid merely because debtor insolvent. **Hadden**, 138/406, 75 S. E. 333.

Bona fide, right of owner as to, against creditors. **Southern Flour &c. Co.**, 127/626, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 9 Ann. Cas. 437.

Bona fide; vendee not liable for vendor's debt. **Austin**, 138/651, 75 S. E. 1048, Ann. Cas. 1913E, 1042; **Greenberg-Miller Co.**, 138/729, 75 S. E. 1120. Aliter where merger instead of sale. **Austin**, 138/651, 75 S. E. 1048, Ann. Cas. 1913E, 1042; **Atlanta &c. R. Co.**, 138/353, 75 S. E. 468.

By debtor to creditor, with right to repurchase in two years; issue of fact for jury. **Wiggins**, 145/835, 90 S. E. 56.

By insolvent debtor stipulating for employment on salary, when valid. **McKenzie**, 118/728, 45 S. E. 610.

Of property; issue as to purpose to delay or defraud creditors, and whether known to purchaser. **Frank**, 144/270, 87 S. E. 3.

To defraud, delay, or hinder creditors. avoidable. **Booth**, 122/333, 50 S. E. 173.

Voluntary, by debtor, for less than value; effect as to creditors. **Oglesby**, 118/203, 44 S. E. 990.

Secret equity; doctrine not applied where sureties held legal title in trust. **Hurst**, 110/33, 35 S. E. 294.

Protection against. **Austin**, 122/440, 50 S. E. 382; **Owens**, 122/523, 50 S. E. 379.

- Protection against, in favor of creditor on faith of apparent ownership. **Reed**, 123/781, 51 S. E. 720; **Roberts**, 129/609, 59 S. E. 289.
- Security bona fide taken from solvent debtor, creditor entitled to. **Hawes**, 124/567, 52 S. E. 922.
- Conveyance as; remedies of grantee and of transferee. **Clark**, 122/274, 50 S. E. 108.
- Holder of several securities for same debt, not compelled to yield either until debt paid. **Hanesley**, 147/96, 100, 92 S. E. 879.
- Right of creditor to redeem property conveyed as. **Shepherd**, 138/555, 75 S. E. 585.
- Security deed embraced partnership debt afterward assumed by the grantor. **Leffler Co.**, 141/741, 92 S. E. 241.
- Ejectment based on. **Hamilton**, 126/28, 54 S. E. 926.
- Other creditors, security deeds, each relating to several notes, effectual as to. **Johnson**, 102/350, 30 S. E. 507.
- Power of sale in, does not pass by a mere entry of transfer on it. **McCook**, 146/93, 90 S. E. 713.
- Limited right of grantee to recover rents and profits. **Stevens**, 137/255, 73 S. E. 366.
- Subject to attack by amendment in claim case. **Ford**, 112/851, 38 S. E. 373.
- Rights of assignees of part of notes secured by. **Georgia Realty Co.**, 19 A. 219, 91 S. E. 267. Necessary party to proceeding to enforce lien of. *Ib.*
- Set-off, right as to claim bought for that purpose. **Nix**, 118/345, 45 S. E. 404, 98 Am. St. R. 111.
- Settlement by receiver of insolvent, court may order. **McGregor**, 124/558, 53 S. E. 93.
- Situs of debt at creditor's domicile; general rule. **Central Georgia Ry. Co.**, 109/354, 34 S. E. 597, 77 Am. St. R. 382; **Henry**, 116/12, 42 S. E. 383; **Beasley**, 116/13, 42 S. E. 385. Rule and exception. **High**, 119/648, 46 S. E. 859. Burden of proof otherwise. **Padrosa**, 122/264, 50 S. E. 97.
- General rule, how affected for taxing purposes. **Armour Co.**, 118/552, 45 S. E. 424, 98 Am. St. R. 128.
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- To non-resident, not in this State, unless under act relating to proceeding in rem. **Levy**, 145/247, 88 S. E. 959. Situs of notes payable without this State, and secured by deed to land here. **Harvard**, 145/581, 89 S. E. 740.
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- Liability of, to suit by creditors for unpaid subscription. **Wilkinson**, 111/187, 36 S. E. 623.
- Liability of, when not held an asset to pay creditors. **Sterling Electric Co.**, 124/372, 52 S. E. 541.
- Non-liability of stockholders as trustee ex maleficio. **Lamar**, 101/270, 28 S. E. 686.
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Payment and control of execution by surety, what essential for claiming fund against other creditors. *Patterson*, 101/214, 28 S. E. 623.

Surrender and satisfaction of existing debt, bona fide, operates as present consideration. *Sutton*, 144/588, 87 S. E. 799.

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As security; recital by receiver did not bind creditors as to validity of transfer. *Bank of Garfield*, 138/799, 76 S. E. 95.

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Conveyed as security did not revert on payment of indorser's grantee. *Moss*, 107/234, 33 S. E. 61.

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Trust beneficiary's suit not treated as action by creditor to subject estate. *Jones*, 108/513, 34 S. E. 169.

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Prohibited trust not created by loan and pledge of collateral. *Booth*, 132/100, 63 S. E. 907.

Property held in, for creditors, by grantee in fraudulent conveyances. *Beasley*, 144/380, 87 S. E. 293.

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Two funds, lien on; doctrine applied only where contending creditors have a common debtor. *Hanesley*, 147/96, 100, 100, 92 S. E. 879; cf. *Collins*, 147/273, 282, 93 S. E. 880.

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Unsecured debt, improper application of proceeds of execution sale to. *Smith*, 150/717, 31 S. E. 754.

Debt is not, if collateral of less amount held. *Farmers Union Co.*, 133/132, 65 S. E. 291.

Usury, attack of security deed for, by purchaser from grantor pendente lite, and by purchaser before suit. *Swift*, 106/35, 31 S. E. 788; *George*, 106/40, 31 S. E. 790; *Marshall*, 106/42, 31 S. E. 791.

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Right of second creditor where debtor pays, or contracts to pay. *Stone*, 107/525, 33 S. E. 861; *Parker*, 107/651, 34 S. E. 365.

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Action not supported by allegations. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

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Agency assumed, or confidential relation, when no basis of action. *Brinson*, 122/8, 49 S. E. 810.

Concealment of truth included in affirmative wilful false statement. *Rutherford*, 1 A. 499, 57 S. E. 927.

Damages remote and speculative, not recovered. *Clegg*, 114/569, 40 S. E. 763.

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Acceptance by public essential. *Georgia R. & Co.*, 118/486, 45 S. E. 256; *Kelsoe*, 120/951, 48 S. E. 366, 102 Am. St. R. 138; *Healey*, 125/736, 54 S. E. 749; *Hurt*, 138/380, 75 S. E. 418; *Mayor &c. of Savannah*, 137/198, 72 S. E. 1095.

For municipality must be authorized. *Ellis*, 138/181, 75 S. E. 99.

For public; not allowable to ignore condition imposed. *Jenkins County*, 139/91, 76 S. E. 856.

For street, implied from municipal improvements, etc. *Lastinger*, 142/321, 82 S. E. 884.

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How proved. *Wade* 136/89, 70 S. E. 880; *Mayor &c. of Americus*, 2 A. 378, 58 S. E. 518.

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To allow for public use, shown by repair, etc. *Perry*, 11 A. 186, 74 S. E. 1005.

Contract and deed construed as, giving town common. *Gordon County* 128/721, 58 S. E. 360.

Created only by owner of land. *Jacobs' Pharmacy Co.*, 143/457, 85 S. E. 3323, Ann. Cas. 1917A, 1105.

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Description of land, sufficient certainty in. *Gartrell*, 144/688, 87 S. E. 917.

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Estoppel of dedicator to assert right not consistent with public easement. *Brown*, 148/85, 95 S. E. 962.

To deny power, by express offer. *Jacobs' Pharmacy Co.*, 143/457, 85 S. E. 332, Ann. Cas. 1917 A. 1105.

To set up title adverse to rights under. *Hurt*, 138/380, 75 S. E. 418.

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Facts constituting. *Davis*, 9 A. 430, 71 S. E. 603.

Guardian can not dedicate ward's property. *Jacobs' Pharmacy Co.*, 143/457, 85 S. E. 332, Ann. Cas. 1917 A. 1105.

Implied; what essential as to basis. *Georgia R. & Co.*, 118/486, 45 S. E. 256.

Injunction against appropriation to private use after dedication. *Gartrell*, 144/688, 87 S. E. 917.

Against diversion or misuser. *Brown*, 148/85, 95 S. E. 962.

Against interference. *Gordon County*, 128/721, 58 S. E. 360.

Against one who offered, when erroneous. *Jacobs' Pharmacy Co.*, 143/457, 85 S. E. Ann. Cas. 1917 A. 1105.

Against sale of parks dedicated to public. *Hurt*, 138/380, 75 S. E. 418.

Intent essential; must be indicated by acts relied on to imply. *Mayor &c. of Savannah*, 140/353, 78 S. E. 906, 48 L. R. A. (N. S.) 469.

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Municipality not incorporated, no reason for defeating. *Lastinger*, 142/321, 82 S. E. 884.

Parks delineated on plat of city lots were for public use. *Hurt*, 138/480, 75 S. E. 418.

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Prescription, when not shown by, from public use for twenty years. *Mayor &c. of Savannah*, 140/353, 78 S. E. 906, 48 L. R. A. (N. S.) 469.

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Public use; dedication for one, not subjected to another; rule and exception.

W. & A. R. Co., 138/427, 75 S. E. 471, 42 L. R. A. (N. S.) 225.

Purpose other than that designated, no right in public to use land for. *Brown, 148/85, 95 S. E. 962.*

Railroad property used as street, no dedication. *Georgia R. &c. Co., 118/486, 45 S. E. 256.*

Reservation inconsistent with, not shown. *Gordon County, 128/781, 58 S. E. 360.*

Revocation of offer on non-compliance with condition, though acceptance expressed. *Jacobs' Pharmacy Co., 143/457, 85 S. E. 332, Ann. Cas. 1917A, 1105.*

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Condition of dedication sufficiently complied with. *Ellis, 138/181, 75 S. E. 99.*

Crossing over railroad track; allowance of street-car tracks thereon. *Southern Ry. Co., 139/726, 77 S. E. 1126.*

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DEEDS.

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See **Administrators and Executors; Estates; Evidence; Husband and Wife; Levy and Sale; Mortgages; Specific Performance; Timber; Title; Trusts; Usury.**

1. Generally.
2. Construction, Form, and Operation.
3. Estates Created by Deeds.
4. Evidence.
5. Execution and Delivery.
6. Forgery of Deeds.
7. Record and Registration.
8. Security Deeds.
9. Sheriffs' Deeds.

1. GENERALLY.

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For fraud in procurement; action barred by laches of plaintiff. **Bryan**, 138/321, 75 S. E. 205; **Smith**, 144/576, 87 S. E. 772.

For fraud in procuring; when no bar from laches. **Manning**, 135/597, 69 S. E. 1126. Allegations sufficient. **Widincamp**, 135/644, 70 S. E. 566.

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For fraud; verdict authorized by evidence. **Bridges**, 148/99, 95 S. E. 964.

For fraud; action by weak-minded plaintiff, good on demurrer. **Calhoun**, 114/642, 40 S. E. 714.

For fraud, allegations insufficient for. **Watkins**, 118/374, 375. 45 S. E. 260, 262.

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sell land and pay off incumbrance. **Jones**, 134/857, 68 S. E. 729, 13 Am. St. R. 276.

For fraud; this petition held not demurrable. **Jones**, 127/379, 56 S. E. 426.

For fraud, where maker was very old and her mental faculties impaired. **Eagan**, 115/130, 41 S. E. 493.

For illegality of levy nullifies past proceedings under judgment, leaving it to be enforced. **Culver**, 132/297, 64 S. E. 82.

For insanity of maker; evidence of fraud and artifice in obtaining, irrelevant. **Boynton**, 112/354, 37 S. E. 437.

For mental incapacity and undue influence. Admissibility of evidence; instructions to jury. **Hubbard**, 148/ 238, 96 S. E. 327.

No error, and verdict authorized. **Jeter**, 135/22, 68 S. E. 787.

For mental incapacity of aged grantor. **Stephenson**, 141/561, 81 S. E. 851.

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For mental incapacity of grantor, undue influence of grantee, and non-delivery. **DeNieff**, 138/248, 75 S. E. 202.

For mental incapacity of grantor, and for fraud. **Gable**, 130/689, 61 S. E. 595; **Neel**, 130/756, 61 S. E. 729.

For omission of exception agreed on in contract of sale, when not decreed. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

For usury charged, not obtained by debtor who is no party to the conveyance. **Love**, 148/170 (dissent, 175), 96 S. E. 211.

For usury, need of tender of principal sum due, with lawful interest. **Weaver**, 146/142, 90 S. E. 846; **Patterson**, 146/364, 91 S. E. 116; **Matthews**, 146/732, 92 S. E. 52.

Cancellation—(Continued.)

For usury, without paying or tendering principal and interest. **Beach**, 101/368, 28 S. E. 110.

For violation of condition subsequent; evidence and instructions to jury. **Groover**, 148/794, 98 S. E. 503.

For want of mental capacity of maker, and for want of sufficient description. **Fuller**, 137/66, 72 S. E. 504.

Grantee necessary party; no laches; offer to restore, when not necessary; cause of action. **Taylor**, 138/41, 74 S. E. 694.

Grantee a competent witness, though grantor dead. **Cato**, 112/139, 37 S. E. 183; **Boynton**, 112/354, 37 S. E. 437; **Harris**, 112/633, 37 S. E. 883.

Grantor who warranted title was necessary codefendant with grantee here. **Paulk**, 123/467, 51 S. E. 344.

Grantor had no such right or interest as to obtain, against purchaser bona fide. **Davis**, 148/117, 95 S. E. 980.

Grantor necessary party to. If dead, his legal representative. **Lane**, 140/415, 78 S. E. 1082.

In equity, as forged or fraudulent. **McCall**, 120/661, 48 S. E. 200; **Reaves**, 120/727, 48 S. E. 199; **Wilkes**, 120/728, 48 S. E. 113.

Ineffective action against temporary administrator of decedent grantee. **Babson**, 147/143, 93 S. E. 292.

In suit for alimony. **Parker** 148/196, 96 S. E. 211.

Necessary and proper parties to proceeding for. **Pierce**, 131/99, 61 S. E. 1114; **Kehoe**, 131/269, 62 S. E. 185; **Zeigler**, 142/487, 83 S. E. 112.

No ground for, where defendants held as tenants in common with plaintiff. **Vinton**, 136/688, 71 S. E. 1119.

Non-delivered deed, in action by grantor. **Hall**, 148/812, 98 S. E. 549.

Not decreed at instance of grantor who executed deed to put title in grantee only until grantor should pay a creditor. **Tune**, 131/528, 62 S. E. 976.

Not decreed at instance of party to combination to suppress competition in bidding at sale. **Ruis**, 138/150, 74 S. E. 1081, 42 L. R. A. (N. S.) 1198.

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Not decreed for breach of promise forming the consideration. **Brand**, 110/522, 36 S. E. 53.

Not decreed merely because of failure of consideration. **Christian**, 145/284, 88 S. E. 986.

Not decreed on ground not pleaded, upon production of quitclaim deed from last taker. **Gaskins**, 131/459, 62 S. E. 581.

Not decreed; plaintiff showing no title, and only prior possession as a "squatter." **Crawford**, 143/310, 85 S. E. 192.

Not decreed where neither grantor nor grantee is a party or represented. **Kehr**, 132/626, 64 S. E. 673.

Not decreed without proper parties. **Malone**, 101/194, 28 S. E. 689.

Not defeated by grantee setting up outstanding title as against minor beneficiaries of trust estate. **Turner**, 131/445, 62 S. E. 587.

Not obtained because of breach of covenant (not condition precedent) on which it was made. **Moore**, 146/197, 91 S. E. 13.

Of conveyance by life-tenant as individual and as trustee for remaindermen, when not obtained. **LaPierre**, 145/851, 89 S. E. 1074.

Of conveyance by trustees of school, who had title, not decreed at suit of church trustees without title. **Stanley**, 140/306, 78 S. E. 1064.

Of debtor's fraudulent conveyance to wife, not decreed in favor of creditor proceeding at law against several debtors. **Cunningham**, 135/249, 69 S. E. 101.

Of deed as cloud on title, and as a forgery. **Echols**, 140/678, 79 S. E. 557.

Of deed as fraudulent and made to hinder creditor, evidence made no case for. **Hatcher**, 142/193, 82 S. E. 513. Evidence made case for submission to jury. **Webb**, 142/423, 83 S. E. 99.

Of deed by creditor to whom land was conveyed to secure debt, cause for. **Turner**, 133/467, 66 S. E. 160.

Cancellation—(Continued.)

Of deed for insanity of grantor; action by his heirs defeated by their delay. *James*, 140/739, 79 S. E. 782.

Of deed of wife to husband, made without order of superior court of her domicile. *Echols*, 140/678, 79 S. E. 557.

Of deed procured by fraud. *Netherton*, 142/51, 82 S. E. 449; *Wallace*, 142/408, 83 S. E. 113.

Of deed to homestead land, made without order of court. *Denson*, 140/134, 78 S. E. 768.

Of forgeries as cloud on title, not obtained without proper parties. *Toland*, 144/238, 86 S. E. 1089.

Of illegal conveyance by wife, when not allowed after ratification. *McClellan*, 135/95, 68 S. E. 1025.

Of instrument offered as deed, which was testamentary in character, not proper here. *Dye*, 108/741, 33 S. E. 848.

Of second, at instance of grantees under first, of two voluntary deeds. *Tools*, 107/473, 33 S. E. 686.

Of tax deed as cloud on title; demurrable allegation in suit by heirs. *Allen*, 145/655, 89 S. E. 821.

Of tax deed, as cloud on title, at instance of owner, after redemption. *Bennett*, 123/625, 51 S. E. 654.

Of widow's part conveyance of year's support land, when not decreed. *Tate*, 144/698, 87 S. E. 1023.

Of wife's conveyance to husband without order of court. *Buchannon*, 135/393, 69 S. E. 543.

Of wife's deed to settle debt of husband, sufficiency of allegations. *Hickman*, 145/368, 89 S. E. 330.

Offer to restore valuable consideration essential to. *Echols*, 140/679, 79 S. E. 557.

On account of usury. *Brown*, 125/833, 54 S. E. 933.

Parties necessary to action, grantors and grantees are. *Brown*, 147/546, 94 S. E. 993; *Fordham*, 147/610, 95 S. E. 3; *Jackson*, 147/631, 95 S. E. 215.

Cancellation—(Continued.)

Parties necessary to action for. Amendment making party defendant allowable. *A., B. & A. Ry. Co.*, 148/282, 96 S. E. 562.

Party necessary, legal representative of deceased grantor is. *Gibbs*, 147/404, 94 S. E. 235.

Parties defendant, omission of, is matter for demurrer, not motion for new trial. *Groover*, 148/794, 98 S. E. 503.

Petition for, good on demurrer. *Lanfair*, 112/487, 37 S. E. 717.

Petition of grantor's heirs at law for, dismissed because of pending issue in court of ordinary as to will devising same land. *Murray*, 129/269, 58 S. E. 841.

Petition for, not subject to demurrer for laches, etc. *Albritton*, 140/169, 170, 78 S. E. 723; *Echols*, 140/678, 79 S. E. 557.

Prayed by amendment by plaintiff in *fi. fa.*, in claim case. *Ford*, 112/851, 38 S. E. 373.

Prayer for, by way of amendment to ejectment, properly denied. *Malone*, 101/194, 28 S. E. 689.

Proceeding for, not governed by rules as to removal of cloud on title. *City of Atlanta*, 135/377, 69 S. E. 571.

Restitution as condition precedent to, not set up, not given in charge. *Harris*, 112/633, 37 S. E. 883.

Suit for, failed for want of competent evidence. *Turner*, 136/275, 71 S. E. 418.

Suit for, not required; insolvent husband conveyed to wife, and she to his creditors. *Smith*, 143/837, 839, 85 S. E. 1034.

Suit for, when remedy, instead of suit for land. *Carr*, 128/623, 57 S. E. 875.

Tender of repayment essential as condition precedent to. *Booth*, 132/109, 63 S. E. 907.

Unnecessary. Wife suing in ejectment could attack, as made to pay

Cancellation—(Continued.)

husband's debt. *Taylor*, 112/330, 37 S. E. 408.

When no right of, on abandonment of public improvement for which deed given. *City of Atlanta*, 135/376, 69 S. E. 571.

When unnecessary; grantor treating deed as void, and bringing ejectment. *Bond*, 133/160, 65 S. E. 376, 134 Am. St. R. 199.

Wife's conveyance to husband; for want of judge's approval, and for fraud and undue influence. *Rich*, 147/488, 94 S. E. 566.

Wife's petition for, demurrable on grounds stated. *Roland*, 131/579, 62 S. E. 1042.

Circumstantial evidence of existence and genuineness of deed, held not sufficient. *Bentley*, 119/530, 46 S. E. 645.

Claim under deeds dated before judgment, and recorded at date of levy, prevails. *Cannon*, 118/99, 44 S. E. 824.

Collateral attack, when not allowed. *Garnett*, 23 A. 432, 98 S. E. 363.

Condemnor not entitled to conveyance from landowner; but if deed executed, its terms govern. *City of Atlanta*, 135/376, 69 S. E. 571.

Consent to, by written assent on petition for leave to sell property. *Lee*, 124/495, 52 S. E. 806.

Copy, establishment of, where lost. Failure of evidence to show literal or substantial copy of lost original. *Western Lodge*, 101/62, 28 S. E. 494.

Not exhibited with petition, no ground for demurrer, when. *Williams*, 18 A. 242, 245, 89 S. E. 459.

Of order to sell must appear, but need not be attached to administrator's deed. How proved. *Brown*, 141/420, 81 S. E. 196; *Hilton & Dodge Lumber Co.*, 141/654, 81 S. E. 1119.

Corporation officer's knowledge of its fraudulent intent in, when presumed. *Nelson*, 129/37, 58 S. E. 697.

Covenant, action on, barred after twenty years, where the deed is under seal. *Kytie*, 128/388, 57 S. E. 748.

Creditors, conveyance to defraud or hinder; rulings arising on charge to jury. *Gaskins*, 145/806, 89 S. E. 1080; *Lane*, 145/810, 89 S. E. 1083.

Conveyance to defeat; issues for jury in claim cases. *Kirkman*, 145/452, 89 S. E. 411; *Warren*, 145/503, 89 S. E. 520; *Germania Bank*, 145/560, 89 S. E. 489.

Conveyance to delay, or hinder, not canceled or set aside at instance of the grantor. *Tune*, 131/528, 62 S. E. 976.

See catchwords, **Fraud, Fraudulent Conveyance.**

Custody of, presumption from, as to claim under. *Brinkley*, 126/483, 55 S. E. 187.

Properly in trust beneficiaries for life. *Allen*, 106/775, 32 S. E. 927.

Debtor's conveyance to wife, though for value, when yields to equitable remedy of creditor. *Lane*, 140/415, 78 S. E. 1082. See *Ford*, 140/670, 672, 79 S. E. 576.

Of equity in property partly unpaid for, not without consideration and not void as to other creditors. *Loewenherz*, 144/560, 87 S. E. 778.

See catchwords, **Creditors, Fraud, Fraudulent Conveyance.**

Declarations of maker or person at whose instance made, when admissible on issue as to whether deed was intended to defraud creditor. *Hayes*, 105/299, 31 S. E. 166; *Cohen*, 105/339, 31 S. E. 205; *Ernest*, 107/61, 32 S. E. 898.

Of deceased grantor, when admissible in favor of grantee. *Hollis*, 103/75, 29 S. E. 482.

Of grantor, as to land intended to be conveyed. *St. John*, 111/158, 36 S. E. 610.

Description, or corporate name of grantee, erroneously stated, reformed. *Rosser*, 102/165, 29 S. E. 171.

Error in, corrected in equity. *Long*, 133/691, 66 S. E. 894.

Erroneous, so known before execution, no reformation. *Bonds*, 102/163, 29 S. E. 218.

Destruction of deed, and executing deed to another, did not defeat title of grantee in first deed. *Allen*, 125/441, 54 S. E. 137; *Holder*, 119/256, 46 S. E. 93.

Of conveyance does not revest title.

Drew, 146/481, 91 S. E. 541.

Devisee in will, being also vendee in conveyance, may claim under both; not put to election. *Johnson*, 139/218, 77 S. E. 73.

Equitable, not legal, estate of trust beneficiaries, jurisdiction of superior court in vacation to authorize sale and reinvestment. *Peavy*, 131/104, 62 S. E. 47. Compare *Morehead*, 131/807, 63 S. E. 507.

Evidence of deceased grantor's statement, attorney he engaged to draw deed a competent witness as to. *Fulier*, 137/66, 72 S. E. 504.

That grantee took in good faith and without notice of prior voluntary conveyance, relevant. *Isler*, 134/192, 67 S. E. 854.

Forfeiture by misuser or nonuser, allegations made no case of. *Harrold*, 131/360, 62 S. E. 326.

Fraud and misrepresentation in procuring. *Thomas*, 118/538, 45 S. E. 449. Fraud and undue influence in procuring, necessary parties to petition of heirs to set aside for. *Gaines*, 116/475, 42 S. E. 763.

Against creditor, conveyance may be void for, though on valuable consideration. *Pfleiger*, 147/473, 94 S. E. 580. See *Adams*, 147/470, 94 S. E. 568.

As against creditors; circumstances to be considered by jury, as tending to show intent. *Nelson*, 129/37, 58 S. E. 697.

As against creditors; when grantor's intent to defeat creditors will not affect grantee knowing of it but having already an equity in the property. *Hunt*, 128/417, 57 S. E. 489. Fraud, or intent to hinder creditors, did not invalidate conveyance to claimant. *Cowart*, 101/1, 29 S. E. 270.

As against third person, as affecting the rights of the parties as against each

other. *Sewell*, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1176.

Conveyance of trustee void for; when subject to attack without equitable pleadings. *Bourquin*, 110/440, 35 S. E. 710.

Grantee without knowledge of intent, not necessarily bound to exercise diligence to discover it. *Spence*, 128/722, 58 S. E. 356.

Inducing; no defense to attachment for contempt of court order. *Smith*, 146/83, 90 S. E. 711.

Inducing; sons of living grantor could not maintain action to set aside conveyance. *Moss*, 146/686, 92 S. E. 213.

In obtaining, evidence of, not available to change terms, where no reformation sought. *Bell*, 133/9, 65 S. E. 90.

In obtaining; false representations to woman in weakened mental condition. *Galloway*, 135/707, 70 S. E. 589.

In obtaining conveyance and giving worthless check in payment; right of grantor and of purchaser bona fide from grantee. *Mize*, 138/503, 75 S. E. 629.

In obtaining, renders voidable, not void ab initio. Doctrine not applied, where grantor insane when deed executed. *Boynton*, 112/354, 37 S. E. 437.

In obtaining signature. *Grimsley*, 133/56, 65 S. E. 92. 134 Am. St. R. 196. Compare *Bond*, 133/166, 65 S. E. 376, 134 Am. St. R. 199. Fraud in procuring signature, testimony denying, when not admissible. *Roberts*, 136/790, 72 S. E. 239. Fraudulent procurement of signature, under pretense that deed was a note. *Kent*, 142/49, 50, 82 S. E. 440.

In procurement of; allegations sufficient on general demurrer. *Calvert Mortgage Co.*, 143/590, 87 S. E. 158.

In procurement of; competency of evidence on issue. *Ogburn*, 142/360, 82 S. E. 1070.

In procuring acknowledgment and ratification of conveyance. When no cause for relief. *Mills*, 148/23, 95 S. E. 698.

In procuring, as ground for setting aside. **Neel**, 130/756, 61 S. E. 729.

In procuring; finding against contention not reversed here. **Cowart**, 140/439, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

In procuring, not relieved against after forty years, when no excuse for delay. **Wilkes**, 120/728, 48 S. E. 113.

Not set aside for, at instance of one who has not offered restitution. **Walker**, 139/547, 549, 77 S. E. 795.

Of buyer of land, who prepared deed, equitable relief to seller on account of. **Gabbett**, 137/143, 144, 72 S. E. 924.

Of corporation in, presumption as to president's knowledge. **Nelson**, 129/37, 58 S. E. 697.

Of creditors, conveyance in; evidence supported finding against contention. **Morehead**, 131/808, 63 S. E. 507.

Of creditors, deed to brother not in. **Cowart**, 101/1, 29 S. E. 270.

Of wife, inducing husband to put title in her; when no cause to avoid conveyance. **Jackson**, 146/675, 92 S. E. 65.

Resulting in, facts showing, must be pleaded. **Tolbert**, 101/746, 28 S. E. 991.

Voluntary conveyance by husband to wife, avoidable as to creditors. **Pusser**, 147/60, 92 S. E. 866.

When not proved in action to cancel deed. **Thompson**, 127/558, 56 S. E. 770.

Maker of deed not allowed to defeat it by setting up his own fraud. **Garnett**, 23 A. 432, 98 S. E. 363.

Fraudulent conveyance not shown from mother and son (debtors) to other son, to hinder creditor. **Hatcher**, 142/193, 82 S. E. 513.

As against creditors; grantor's administrator cannot recover, to pay them. **Boswell**, 147/734, 95 S. E. 247.

As to creditors, deed of husband to wife attacked as. Status of purchaser from wife. **Hinkle**, 133/255, 65 S. E. 427. See **Brand**, 133/750, 66 S. E. 935.

As against creditors; facts making issue for jury. **Virginia-Carolina Chemical Co.**, 23 A. 624, S. E. 151. Valid as between parties. **McDowell**, 107/812, 33 S. E. 709, 73 Am. St. R. 155.

As to part of land conveyed by, and bona fide as to another part, whether deed can be treated as. **Earnest**, 115/299, 41 S. E. 640.

To hinder creditors; conveyance not subject to attack by subsequent creditors, when. **Jowers**, 10 A. 297, 73 S. E. 415. Vendor's retention or possession, when not invalidate, as to pre-existing creditor, a sale otherwise bona fide. **Id.**

Conveyance by insolvent parent to child, not necessarily fraudulent. **Coolley**, 111/439, 36 S. E. 786.

By husband to wife. **Waller**, 22 A. 479, 96 S. E. 333.

Not void as to grantee, when. **Hollis**, 103/76, 29 S. E. 482; **Lamkin**, 103/631, 30 S. E. 596.

To defeat creditors. **Varn**, 142/243, 82 S. E. 641; **Webb**, 142/423, 83 S. E. 99; **Helmken**, 138/200, 75 S. E. 3; **Jarrett**, 138/202, 203 74 S. E. 1095. Not so held. **Mitchell**, 148/244, 96 S. E. 430; **Yates**, 148/246, 96 S. E. 427. See **Almand**, 148/369, 96 S. E. 962. Set aside as. **Krueger**, 148/429, 96 S. E. 867; **Mitchell**, 148/596, 97 S. E. 528. See **Norton**, 148/652, 98 S. E. 76.

To defeat creditors, equitable petition attacking, how far sustained on demurrer. **Maynard**, 138/549, 75 S. R. 582; **Shepherd**, 138/555, 75 S. E. 585.

To wife, cancellation of, at suit of creditor. **Lane**, 140/415, 78 S. E. 1082. Compare **Ford**, 140/670, 79 S. E. 576.

Deed in payment of debt, void where made to delay other creditors, if grantee takes with knowledge of the purpose to delay them. **Bigby**, 115/385, 41 S. E. 622, 57 L. R. A. 754.

Intent in making, when not affect grantee. **Ernest**, 107/61, 32 S. E. 898. Fraudulent intent in executing deed, shown by plea. Dissent: fraud not to

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be presumed as matter of law. *Tune*, 131/530, 534, 62 S. E. 976.

Liability of grantee to creditor of grantor; not allowed to set up debt of grantor to reduce amount of recovery. *Bigby*, 115/385, 41 S. E. 622, 57 L. R. A. 754.

Of property of corporation, to a new corporation formed by members of old, for purpose of defeating creditors. *Buckwalter*, 115/484, 41 S. E. 1010.

On issue of, sayings of deceased maker inadmissible. *Hollis*, 103/75, 29 S. E. 482.

Prima facie, as against creditor; facts rebutting presumption. *Cohen*, 105/339, 31 S. E. 205.

Slight circumstances sufficient to show that conveyance by husband to wife was. *Manley*, 128/351, 57 S. E. 705.

To conceal ownership; equitable petition to subject to dormant judgment property conveyed by. *Kruger*, 111/383, 36 S. E. 794.

To insolvent's wife, instructions as to. *Rushing*, 105/166, 31 S. E. 154.

When renders liable to attachment. *Hobbs*, 103/1, 30 S. E. 257.

Wife's to husband, circumstances authorizing verdict finding fraud in. *Bigby*, 115/398, 41 S. E. 622, 57 L. R. A. 754.

With benefit reserved, when subject to attack in collateral proceeding. *Coleman*, 115/510, 42 S. E. 5.

With power of sale, to trustee; no title conveyed by deed to purchaser, made in pursuance of the power. *Coleman*, 115/510, 42 S. E. 5.

Heirs, conveyance from, and proof of their possession relevant as basis of right of entry. *Davitt*, 108/667, 34 S. E. 327.

Conveyance of, to trustee was no basis of prescriptive title against heir not included. *Slay*, 145/777, 89 S. E. 830.

Could not set aside deed to coheir, for failure to perform the considera-

tion stated therein. *Wood*, 133/752, 66 S. E. 951.

Husband, wife's reconveyance to, on payment of debt, required no allowance by judge. *Turner*, 133/467, 66 S. E. 160.

Conveyance by, to wife, in fraud of creditors, evidence authorized finding as to. *Strickland*, 131/409, 62 S. E. 322.

Debt of, right of wife to cancel her conveyance given to pay; allegations on demurrer. *Hickman*, 145/368, 89 S. E. 330.

Debt of, wife's conveyance of her property to extinguish, absolutely void. *Bond*, 133/160, 65 S. E. 376, 134 Am. St. R. 199; *Ginsberg*, 145/815, 89 S. E. 1086.

Debt of, wife's deed to secure, void as to her and her privies. *Pierce*, 131/101, 61 S. E. 1114; *Taylor*, 131/416, 62 S. E. 291.

Deed by, to wife, for her support, on separation, when valid. *Sumner*, 121/1, 48 S. E. 727. Deed to wife, made at instance of husband, treated as his voluntary conveyance, and not good as against creditor here. *Longmore*, 121/411, 49 S. E. 264.

Wife's sale and conveyance to, void, if not confirmed by superior court of her domicile (not judge in vacation). *Roland*, 131/579, 62 S. E. 1042; *Stonecipher*, 131/688, 63 S. E. 215, 127 Am. St. 249.

Ignorance of party, as to contents of. *Sumner*, 121/9, 48 S. E. 727.

Illicit intercourse in future, as consideration, deed void, and no title passes. Aliter if consideration be past intercourse. *Watkins*, 118/378, 45 S. E. 260.

Promised for deed, and possession acquired, no recovery by grantor or his heirs. *Watkins*, 118/374, 45 S. E. 262.

Illiterate person who signed on misrepresentations of nature or contents of deed, not bound. *Grimsley*, 133/56 65 S. E. 92, 134 Am. St. R. 196.

Inadequacy of price alone not sufficient for setting aside. Hickman, 145/368, 89 S. E. 330. Great inadequacy with disparity of mental ability, as ground for setting aside. McKinnon, 145/373, 89 S. E. 415; Pye, 133/246, 65 S. E. 424.

Incapacity to make, from age and feebleness. Thompson, 120/440, 47 S. E. 935.

Injunction against conveying land, pending suit involving the title, unnecessary, but discretion of court not interfered with. Bell, 111/395, 36 S. E. 780.

Insanity of grantor, as ground for canceling. DeNieff, 138/249, 75 S. E. 202.

As ground for setting aside; mere weakness of mind, insufficient. Kirk, 123/104, 50 S. E. 928. Evidence warranting finding as to, here. Parker, 123/441, 51 S. E. 465.

Of grantor, ignorance of, does not per se entitle grantee to hold under deed. Woolley, 114/122, 39 S. E. 892, 88 Am. St. R. 22.

Of maker, evidence as to, considered. Lunday, 129/595, 59 S. E. 276.

Renders voidable, not void ab initio. Woolley, 114/122, 39 S. E. 892, 88 Am. St. R. 22.

Insolvent bank's, when void. Clarke, 107/565, 33 S. E. 802.

Insolvent debtor's. See catchwords "Fraud," "Fraudulent," supra.

Insolvent parent's, to child, not necessarily fraudulent. Cooley, 111/439, 36 S. E. 786.

Knowledge and acquiescence in conveyance of mineral interest, materiality of testimony as to. Wheeler, 139/604, 77 S. E. 875.

Of deed, what evidence inadmissible to negative, or to show refusal to accept. Brinkley, 131/226, 62 S. E. 67.

Larceny of paper relating to title; allegation of ownership not required. Hanson, 13 A. 372, 79 S. E. 176.

Life-estate, purchaser from owner of, acquired no prescriptive title against devisees in remainder. Howard, 142/1, 5, 82 S. E. 292; Belt, 142/366, 82 S. E. 1071.

Lost; admissibility of testimony of grantee. Robert, 136/901, 72 S. E. 234.

By whom signed, could be shown by parol testimony preparatory to proving loss. Acme Brewing Co., 115/504, 42 S. E. 8.

Failure of evidence in proceeding to establish copy. Clements, 101/62, 28 S. E. 494.

Petition not maintained to establish copy of, under incidental prayer, where vendor not a party. Story, 110/66, 35 S. E. 314.

Proof of contents. Patterson, 126/478, 55 S. E. 175.

Right of action by heir of grantee, to establish copy. Admissibility of evidence. Orr, 145/137, 88 S. E. 669.

Evidence sufficient as to loss or destruction. Denney, 118/223, 44 S. E. 982. Aliter. Cox, 118/414, 45 S. E. 401.

Loss not shown where the evidence failed to show it was not in the possession of one who would be a natural and proper custodian of it. Acme Brewing Co., 115/495, 503, 42 S. E. 8.

Loss shown without proof that it was not in the possession, custody, or control of the grantee, where he had sold and deeded the property to another. Acme Brewing Co., 115/494, 42 S. E. 8.

Married woman's deed, avoidance of; remedies, to recover land and cancel deed. Blackburn, 137/265, 73 S. E. 1; Gilmore, 137/272, 73 S. E. 364.

To husband, without approval of court, void; conduct amounting to ratification of. Sikes, 20 A. 470, 93 S. E. 111.

Suretyship by joining in warranty deed. Ashburn, 8 A. 566, 569, 70 S. E. 19.

Mental capacity to make, defined. Dunn, 139/741, 78 S. E. 122; DeNieff, 138/249, 75 S. E. 202; Gable, 130/689, 692, 61 S. E. 595; Neel, 130/756, 61 S. E. 729; Pye, 133/246, 65 S. E. 424.

Capacity of grantor, at time of signing, and of delivery. Mays, 137/27, 72 S. E. 408.

Condition arising from physical pain, as explaining omission to declare forfeiture. **Groover**, 148/794, 98 S. E. 503. Illustrated by grantor's later devise of property conveyed. **Hubbard**, 148/238, 96 S. E. 327.

Condition of maker, as ground for cancellation; error in granting non-suit. **Lunday**, 129/595, 59 S. E. 276.

Incapacity, allegation of, when not allowed by amendment to action for cancelling. **Christian**, 145/284, 88 S. E. 986.

Incapacity, as ground for cancellation. **Connelly**, 126/656, 55 S. E. 916.

Incapacity of grantor, evidence insufficient to authorize finding. **Hixon**, 144/408, 87 S. E. 475.

Incapacity of maker, testimony as to, irrelevant where plaintiff claims, not as heir of maker, but as devisee of maker's husband. **Thomas**, 134/606, 68 S. E. 323.

Incapacity to make, and undue influence, admissibility of testimony on issues of. **Stephenson**, 141/561, 81 S. E. 851.

Incapacity to make, not sufficiently shown. **Richardson**, 110/425, 35 S. E. 648.

Weakness short of imbecility, without fraud or undue influence, deed not set aside for. **Johnson**, 134/696, 68 S. E. 480.

Weakness, when insufficient as ground for setting aside. **Kirk**, 123/104, 50 S. E. 928.

Minor's conveyance, evidence to show ratification of, after attaining majority. **Davis**, 137/450, 73 S. E. 579.

Mistake, correction of; and what evidence competent to rebut presumption of delivery. **Scarborough**, 127/527, 56 S. E. 293.

As ground for equitable relief. **Perkins Lumber Co.**, 117/394, 43 S. E. 696; **Berry**, 117/964, 44 S. E. 824.

As ground for reformation. **Nelson**, 129/35, 58 S. E. 697; **Turner**, 129/89, 58 S. E. 657; **Venable**, 129/537, 59 S. E. 253. Mistake in voluntary deed, not

corrected on petition of grantee; rule and exceptions. **Turner**, 129/89, 58 S. E. 657.

As to quantity of land. **White**, 7 A. 766, 68 S. E. 271; **Owens**, 9 A. 179, 70 S. E. 989.

In conveyance afterward acknowledged and ratified, when no cause for equitable relief. **Mills**, 148/23, 95 S. E. 698.

In conveying larger tract than intended; possession remaining in grantor not notice of. **Malette**, 120/735, 48 S. E. 229.

In deed of administratrix, issue of fact upon, for jury. **Broadhurst**, 137/833, 74 S. E. 422.

In lot number, when not permissible to explain. **Oliver**, 121/836, 49 S. E. 743, 104 Am. St. R. 185.

Not shown by evidence here. **Lee**, 115/65, 41 S. E. 246.

Not to be shown by parol evidence, where grantor is not a party. **Roberts**, 136/790, 72 S. E. 239.

In number of acres of land lot conveyed, no reason for rejecting. **Guest**, 145/593, 89 S. E. 687.

Of fact as to land described, equitable relief against. **Gabbett**, 137/144, 72 S. E. 924.

Of law (not of fact) in omitting matter from, when no ground for equitable relief. **Caudell**, 127/1, 55 S. E. 1028.

When not shown by parol evidence. **Thompson**, 137/308, 73 S. E. 640.

Motive of grantor in making; testimony objectionable as opinion. **Huger**, 137/205, 73 S. E. 385.

Notice of occupant's title, by grantor's holding of possession after making deed to the premises. **Kent**, 142/49, 50, 82 S. E. 440. Prior possession not notice. **Webster**, 142/806, 83 S. E. 41.

Principle that purchaser without notice from one with notice will be protected applied. **West**, 121/470, 49 S. E. 285.

Order or decree of court authorizing execution of deed, necessity for. **Brown**.

141/420, 81 S. E. 196; **Hilton & Co.**, 141/654, 81 S. E. 1119.

Parties in pari delicto, rule as to when courts will not relieve. **Deen**, 128/265, 57 S. E. 427; **Sewell**, 128/827, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Perjury as to. **Mallard**, 19 A. 99, 90 S. E. 1044.

Plat of processioners, only prima facie correct, where no issue as to its correctness has been determined. **McGraw**, 129/780, 59 S. E. 898.

Possession held adversely to administrator at time of conveyance by him, no title passed. **Hanesley**, 109/348, 34 S. E. 584.

Of back deeds, purchaser not entitled to, where he buys at judicial sale. **Gay**, 115/734, 42 S. E. 86.

Of part of tract, when not extended to boundaries. **Knight**, 113/616, 39 S. E. 103.

Under deed in trust for wife, deemed held by her in accord with deed, not opposed to it. **Anderson**, 147/138, 93 S. E. 93.

Under deed not shown, prima facie title not established by, in defendant in claim case. **Thompson**, 107/834, 33 S. E. 689.

Presumption that defendant producing, under notice, claimed under. **Brinkley**, 126/480, 55 S. E. 187.

Priority of deed of client to third person without notice, over equity of attorney under contract. **Hodnett**, 131/68, 61 S. E. 1124.

Executor's deed in pursuance of sale under power in will, to one without notice of deed of gift by testator, gave superior title. **Culbreath**, 129/280, 58 S. E. 832.

Privies in blood or estate not heard to set aside, where grantor took no such step. But this doctrine not applied where grantor insane when deed executed. **Boynton**, 112/357, 37 S. E. 437.

Purpose of deed to settle husband's debt, or criminal prosecution against him; issue of fact settled by verdict. **Taylor**, 112/334, 37 S. E. 408.

Reformation. **Weaver**, 114/165, 39 S. E. 874; **Sheppard**, 114/411, 40 S. E. 282.

Allegations not sufficient to support prayer for, by striking "more or less," **King Lumber Co.**, 136/739, 72 S. E. 37.

Amendment praying, set up new and distinct cause of action. **Venable**, 118/156, 45 S. E. 29.

As affecting consent to. **Clarke**, 113/22, 38 S. E. 323.

By designating land district, section, and county, omitted from deed by mistake. **Allen**, 141/226, 80 S. E. 713.

Cause of action for. **Summerour**, 148/499, 97 S. E. 71.

Character of evidence required. **Robertson**, 148/81, 95 S. E. 973.

Effect of adjudging deed to be mere security for debt; necessary parties. **Hamilton**, 127/765, 56 S. E. 1022.

Facts authorizing. **Clarke**, 113/22, 38 S. E. 323.

For erroneous description. **Smith**, 110/278, 34 S. E. 582; **Long**, 133/691, 66 S. E. 894.

For fraud in procurement. **Brooks**, 138/310, 75 S. E. 157. Allegations made no case. **Cobb Real Estate Co.**, 138/589, 75 S. E. 652.

For mistake of one party accompanied by fraud of the other. **Venable**, 129/537, 59 S. E. 253.

For mistake, parol evidence on question of. **Terrell**, 108/657, 34 S. E. 345.

For mistake by inserting name of lender as one of vendees, issue of fact on. **Broadhurst**, 137/833, 74 S. E. 422.

For mistake, by restoring omitted words "more or less," when not decreed. **Campbell Coal Co.**, 142/434, 83 S. E. 105.

For mistake can not be had where grantor is not a party. **Roberts**, 136/790, 72 S. E. 239.

For mistake, evidence did not authorize. **Campbell Coal Co.**, 142/434, 83 S. E. 105.

For mistake in description of land; evidence did not authorize direction of

Reformation—(Continued.)

verdict. **Wiseman**, 147/372, 94 S. E. 252.

For mistake in description of land; intention of the parties governs. **Barnes** 136/264, 71 S. E. 163.

For mistake of fact, and for fraud, evidence made no case for. **Hammond**, 140/260, 78 S. E. 897.

For mistake or omission in description of property. **Kerchner**, 106/439, 32 S. E. 351.

For mutual mistake; omitted donees proper parties; no bar from laches. **Kelly**, 135/505, 69 S. E. 724.

For mutual mistake, strength of evidence required to justify. **Newberry**, 146/679, 92 S. E. 67.

For omission of agreed exception, when not decreed. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

For omission of agreement by fraud, accident, or mistake. **L. & N. R. Co.**, 133/17, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Fraud of grantee (wife) and her father, and misplaced confidence of grantor (husband). **Rigell**, 142/357, 82 S. E. 1057.

In description, on account of fraud of buyer, where seller not in laches. **Gabbett**, 137/143, 144, 72 S. E. 924.

Issue as to, limited as to basis on which sought. Error in charge to jury. **Rawlings**, 143/726, 85 S. E. 851.

Necessity for, to admit evidence. **Oliver**, 141/126, 80 S. E. 630.

Necessary, to correct mistake. **Thompson**, 137/308, 73 S. E. 640.

Not decreed where matter alleged to have been omitted by mistake was not so omitted. **Caudell**, 127/1, 55 S. E. 1028.

Not decreed on general allegations, or at instance of volunteer not a party to. **Gould**, 120/51, 47 S. E. 505.

Not effected during grantor's life (though insane), in suit by her child. **Pidcock**, 145/103, 88 S. E. 564.

Not obtained by one not in privy. **Garlington**, 146/527, 91 S. E. 553.

Reformation—(Continued.)

Not obtained, where parol agreement of vendees not shown concurred in by vendor. **Pound**, 146/434, 91 S. E. 405.

Not obtained without proper parties. **Lively**, 142/204, 82 S. E. 545.

Not proper proceeding for purpose of declaring invalid. **Isler**, 134/194, 67 S. E. 854.

Of voluntary deed for mistake as to intention of grantor; evidence and charge to jury. **Clark**, 141/437, 438, 81 S. E. 129.

Of deed which does not speak the true intention, not decreed, where no intention to insert the agreement set up. **Waters**, 124/349, 353, 52 S. E. 425.

Parol agreement as ground to reform deed apparently of bargain and sale. **Summerour**, 148/499, 97 S. E. 71.

Petition for, when not demurrable by administrator of grantor. **Griffin**, 101/720, 29 S. E. 29.

Reformed deeds take effect from date of execution, except as against bona fide purchasers and those in like relations. **Nelson**, 129/36, 58 S. E. 697.

Sufficiency of pleadings, and admissibility of parol testimony. **Nelson**, 129/35, 58 S. E. 697. When not reformed on petition of volunteer. **Turner**, 129/89, 58 S. E. 657.

Sufficient evidence for. **Ware**, 110/576, 35 S. E. 774.

Though vendee were entitled to, another having an interest in the land or his creditors would not be bound by contract to which he was no party and assented not. **Atlanta Trust Co.**, 116/915, 43 S. E. 380.

To conform to parol contract as to interpretation. **Harris**, 103/324, 29 S. E. 929.

To effectuate unexpressed intention as to description of land. **Huntress**, 116/355, 42 S. E. 513.

When necessary to change terms. **L. & N. R. Co.**, 133/17, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860; **Bell**, 133/8, 65 S. E. 90.

When not granted after twenty-three years. *Aiken*, 134/665, 68 S. E. 482. As to quantity of land, or manner of conveying by tract instead of by acre. *Georgia &c. Development Co.*, 134/674, 68 S. E. 514.

Where acceptance not induced by accident, mistake, or fraud of administrators, not granted. *Greer*, 141/309, 80 S. E. 1002.

Without making parties alleged heirs of deceased grantor. *Rosser*, 102/165, 29 S. E. 171.

Refusal of vendor to make, no obstacle to vendee procuring injunction against trespass. *Loudermilk*, 130/525, 61 S. E. 122.

Rescission, equitable action for. *Davis*, 135/116, 69 S. E. 172.

Not decreed for violation of covenant or reservation clause. *Self*, 139/400, 77 S. E. 562; *Hughes*, 139/406, 77 S. E. 584.

Sayings of deceased maker, when inadmissible in favor of grantee. *Hollis*, 103/75, 29 S. E. 482.

Settlement by deed of husband to wife, good; trustee not necessary. *Sumner*, 121/5, 48 S. E. 727.

Specific performance of covenant in. *L. & N. R. Co.*, 145/594, 89 S. E. 693.

Subrogation of purchaser at void sale under judgment in favor of grantee. *Ashley*, 109/658, 35 S. E. 89.

Sunday, deed of gift executed on, valid. *Dorough*, 118/178, 45 S. E. 22.

Tax, bidder at tax sale not entitled to, before tender of amount bid. *Wood*, 107/392, 33 S. E. 410.

Tender of, for execution, when not necessary before suit by vendee for specific performance of contract for sale of land; rule as to tender where suit is by vendor. *Wellmaker*, 123/201, 51 S. E. 436.

Of purchase-money, on condition that deed be executed, when not good. *Elder*, 115/691, 42 S. E. 51.

Testimony that deed was made in pursuance of order of court, when not admissible. *Thompson*, 134/80, 67 S. E. 446.

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Title, effect of setting out deed as evidence of, without attacking, or attempting to reform it. *Guinn*, 148/112, 95 S. E. 968.

Trespass caused or aided by making deed under which trespasser enters; joint liability of maker. *Burch*, 14 A. 153, 80 S. E. 664.

Trover to recover title papers. *Gay*, 115/734, 42 S. E. 86; *Gaskins*, 13 A. 583, 585, 79 S. E. 483.

Undue influence, testimony relevant on issue of. *Cato*, 112/139, 37 S. E. 183.

Evidence insufficient to show. *Hixon*, 144/408, 87 S. E. 475.

To obtain, exercised by one in confidential relation, defined. *DeNieff*, 138/249, 75 S. E. 202.

What testimony not admissible to prove. *Jeter*, 135/22, 68 S. E. 787.

Usury, as ground for cancellation, where deed and option for repurchase are cover for. *Brown*, 125/838, 54 S. E. 933.

Attack for, not available to grantee as against judgment foreclosing prior conveyance as a mortgage. *Burks*, 108/783, 33 S. E. 711.

Attack upon deed for, when concluded by judgment. *Miller*, 133/187, 65 S. E. 410.

Avoidance of deed for. *Davis*, 139/714, 78 S. E. 190, 46 L. R. A. (N. S.) 750.

Evidence of, by recital in. *Beach*, 101/357, 28 S. E. 110.

Not shown by evidence here. *Equitable Mortgage Co.*, 119/289, 46 S. E. 440.

In deed, power of sale void, injunction not needed to restrain exercise of the power. *Lanier*, 117/397, 43 S. E. 711.

Renders void as against judgment creditors of grantor. *Stone*, 107/524, 33 S. E. 861.

VOIDS title conveyed by, and shown by entry on the back. *McBrayer*, 122/246, 50 S. E. 95.

Sufficiency of evidence to invalidate deed for. *Equitable Mortgage Co.*, 116/680, 43 S. E. 49.

Deed to realty for cash price and contemporaneous agreement to repurchase at higher price, when not usurious. *Felton*, 109/320, 35 S. E. 175.

Deed in payment of usurious debt, valid. *Stone*, 107/531, 33 S. E. 861.

Vendee holding bond for title, with part of price paid, has no leviabie interest in land. *Ramey*, 133/751, 66 S. E. 918.

Of land subject to levy, when not entitled to injunction against sale. *National Bank*, 133/229, 65 S. E. 412.
Voidable, implied ratification of. *Whitley*, 121/521, 49 S. E. 600.

Void or voidable, ejectment lies in suit of grantor against grantee or one holding under him with notice of the consideration. *Bond*, 133/160, 65 S. E. 376, 134 Am. St. R. 199.

As title, of no effect as equitable mortgage. *Beach*, 101/357, 28 S. E. 110.

2. CONSTRUCTION, FORM, AND OPERATION.

Absolute in form, maker retaining possession of land, shown by parol to be only security for debt. *Lowe*, 141/380, 81 S. E. 230; *Berry*, 141/642, 81 S. E. 881; *Mercer*, 136/632, 71 S. E. 1075. Absolute on face, and accompanied by possession, when not proved by parol evidence to be mortgage. *Walker*, 141/436, 81 S. E. 203.

Acceptance of deed, and entry on land conveyed thereby, binds by covenants therein. *Atlanta Ry. Co.*, 124/929, 53 S. E. 701, 6 L. R. A. (N. S.) 436, 110 Am. St. R. 215. Acceptance of deed bound grantee to covenants therein. *Kyle*, 128/388, 57 S. E. 748.

Equivalent to conveyance of interest by one to the other grantee, deed so reciting. *McCraw*, 134/579, 68 S. E. 324.

Acreage in description; effect of deficiency. *Owens*, 9 A. 179, 70 S. E. 989; *Milner*, 9 A. 659, 71 S. E. 1123. Sale

by tract, no acre. *ib.*; *White*, 7 A. 766, 68 S. E. 271; *Rawlings*, 143/726, 85 S. E. 851.

All land conveyed is embraced in the calls and as located by grantor, though area exceed estimate of acres. *McElroy*, 142/38, 82 S. E. 442.

Administrator's deed conveyed title in fee to widow, subject to her dower in part of the land. *Knight*, 146/752, 92 S. E. 281.

To woman claiming as widow, though under order, was ineffective. *Curlew*, 146/367, 91 S. E. 115.

Effect of recitals in. *Nixon*, 137/516, 73 S. E. 747.

To land held adversely, void. *Thrift*, 144/508, 87 S. E. 676.

Passes no title if part of land held adversely. *Lowe*, 112/341, 37 S. E. 374.

Must be supported by order of court of ordinary granting leave to sell. *Hall*, 122/252, 50 S. E. 106.

Presumption that there was no intention to exceed authority as to extent of interest conveyed. *Collinsville Co.*, 123/831, 51 S. E. 666.

Recital in, of compliance with "all the requisites of the law," etc., prima facie true, and sufficient without express recital of necessary advertising. *Floyd*, 129/675, 59 S. E. 909.

Intent to convey as administrator or executor, shown, by deed, though signed without indicating official character. *Sapp*, 131/433, 62 S. E. 529; *Dodge*, 131/549, 62 S. E. 987. Administrator took title individually; but deed impressed with equity in favor of the estate. *McCranie*, 139/792, 77 S. E. 1064.

Recital in, not sufficient to show order for sale; the order must be produced, to show title. *Roberts*, 113/174, 38 S. E. 402.

See **Administrators and Executors**.

Admissions by recitals in. *Coldwell Co.*, 138/233, 236, 75 S. E. 425.

Advancement, conveyance in trust on consideration of support to grantor may

operate as, if so intended. **Parker**, 147/432, 94 S. E. 543.

Deed of gift presumed to be. **Howard**, 101/224, 28 S. E. 648.

To distributee by deed of gift to her husband, of which she did not know. **Ireland**, 133/851, 67 S. E. 195, 26 L. R. A. (N. S.) 1050, 18 Ann. Cas. 544.
After-acquired property, clause relating to, did not cover engine in question. **Real Estate Bank**, 145/831, 90 S. E. 49. **After-acquired rights**, when do not pass. **Baker**, 127/650, 57 S. E. 62.

Agency for another in making, shown by recitals, though not by signature. **Payton**, 128/517, 58 S. E. 50, 11 Ann. Cas. 163. See **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 An. Cas. 167.

Deed of agent to corporation of which he is president and stockholder, voidable; ratification implied from non-action, when. **Whitley**, 121/521, 49 S. E. 600.

Alimony, deed was not a provision for, so as to be annulled by subsequent cohabitation of parties. **Lemon**, 141/448, 81 S. E. 118.

Conveyances to defeat, equitable action against. **Moss**, 144/194, 86 S. E. 548.

Alley rights, under conveyance here. **Murphey**, 115/77, 41 S. E. 585.

Alteration designedly done, effect of. **Gorham**, 137/139, 72 S. E. 893.

Alteration material, not made by adding attestation, when. **Heard**, 121/437, 49 S. E. 292.

On oral authority, after delivery, contravenes statute of frauds. **Boyd Lumber Co.**, 146/796, 92 S. E. 534.

Ambiguity in deed, when explainable by parol. **Hall**, 122/254, 50 S. E. 106.

Not created by words "being the same land owned and occupied by me," just after description by metes and bounds. **Malette**, 120/735, 48 S. E. 229.

Not explainable by parol evidence of undisclosed intent. Deed here was

not ambiguous. **Read**, 139/499, 77 S. E. 642.

Of description, deed here not void for. **Horton**, 117/72, 43 S. E. 786. No ambiguity here. **Perkins Lumber Co.**, 117/395, 43 S. E. 696.

Ancient deed, recitals in, when not presumed to be true. **Lanier**, 123/626, 51 S. E. 632.

Appurtenance existing conveyed by grant; no appurtenance created thereby. As to water power on land. **Muscogee Mfg. Co.**, 126/211, 54 S. E. 1028, 7 L. R. A. (N. S.) 1139.

Included right to unobstructed use of alley, in deed here. **Murphey**, 115/77, 41 S. E. 585.

Land is not appurtenant to land. Corporeal and incorporeal things as appurtenances. **Moss**, 126/196, 202, 54 S. E. 968.

"Assignee," "transferee," when includes grantee. **Hendrick**, 119/361, 46 S. E. 438.

Assignment for creditors, deed to accommodation indorsers held to be. **Johnson**, 134/828, 68 S. E. 590, 31 L. R. A. (N. S.) 332.

Assumption of debt as part of consideration of conveyance of property subject to prior security deed did not create contractual relation between the prior grantee and the grantee assuming the debt; former not entitled to sue latter for amount due. **Graves**, 21 A. 544, 94 S. E. 833.

Acceptance of deed reciting, binds grantee, though he sign not. **Union City Realty Co.**, 138/704, 76 S. E. 35.

Absolute conveyance made and note taken, its payment not enforced by levy on the land as against second vendee, though his deed recite he agrees to pay the note. **Rounsaville**, 108/548, 34 S. E. 141.

Bill of sale construed to be equitable mortgage, when. **Ellison**, 7 A. 214, 66 S. E. 631.

Blank left for grantee's name, and authority to fill the blank not shown, deed not good, when. No estoppel by re-

cital of valuable consideration. **Van Dyke**, 119/830, 832, 47 S. E. 192.

Left in, at time of execution, sufficiency of parol authority for another to fill. **Bowen**, 144/1, 85 S. E. 1007.

Blasting rock, right of, under covenant construed. Non-liability in trespass. **Spencer**, 140/632, 79 S. E. 543.

Bona fides, instructions as to. **Rushing**, 105/166, 31 S. E. 154. Declarations of maker, or person at whose instance made, admissible to show, when. **Hayes**, 105/299, 31 S. E. 166; **Cohen**, 105/339, 31 S. E. 205.

In taking, not measured by intelligence. **Lee**, 103/355, 30 S. E. 356.

Of grantee, he may testify to, when. **Acme Brewing Co.**, 115/502, 42 S. E. 8.

Bond for title, rights of holder of, discussed. **Guin**, 6 A. 486, 65 S. E. 330.

Boundary, effect of giving street or alley as. **Wimpey**, 137/328, 73 S. E. 586.

Given as the land of a person named, when sufficient, though his title defective. **Moody**, 131/521, 62 S. E. 821.

Given as land of other person, true line taken, not a conventional one by parol agreement. **Gabbett**, 137/146, 72 S. E. 924.

Located by executed parol agreement, or established by seven years acquiescence, binds grantees of coterminous proprietors. **Osteen**, 131/209, 62 S. E. 37, 127 Am. St. R. 212.

Of land conveyed by other lots of grantor; effect in dealing with description. **Glover**, 142/862, 83 S. E. 939.

Of land disputed; admissibility of testimony; verdict supported by evidence. **Pelham**, 137/39, 72 S. E. 417.

Extent of, on artificial pond of long existence. **Boardman**, 102/404, 30 S. E. 982, 51 L. R. A. 178.

Street or way stated as, and shown on plat referred to, grantee entitled to have it kept open for use, though gate be across it. **Schreck**, 131/489, 62 S. E. 705.

Street referred to as, is way opened and used, rather than as formerly ex-

isting. **Johnston**, 139/556, 77 S. E. 807.

When true line prevails over conventional one agreed on when deed executed. **Hall**, 122/252, 50 S. E. 106.

Description by boundaries. **White**, 7 A. 764, 68 S. E. 271.

Rule of construction as to boundaries. **Town of Roswell**, 128/48, 57 S. E. 114.

Rule as to effect of boundaries. Prevail over courses and distances. **Land Trust Co.**, 23 A. 390, 95 S. E. 1006.

Located by monuments and distances, former prevail in case of discrepancy. **Hammond**, 116/792, 43 S. E. 53; **Thompson**, 137/311, 73 S. E. 640.

Burden of proof of invalidity of, on party attacking. **Dorough**, 118/180, 45 S. E. 22.

Certain, if can be made certain; rule applied to description. **Atlanta R. Co.**, 125/541, 54 S. E. 736.

Character of instrument, testimony helpful in determining. **Brice**, 118/130, 44 S. E. 843.

Charge created by deed here was on income, not corpus. **Hitchcock**, 107/184, 33 S. E. 35.

"**Children**" and "issue," when not include bastard. **Johnstone**, 107/6, 32 S. E. 931, 45 L. R. A. 95.

Born subsequently to deed to A as trustee for B and "the children issue of their marriage," took nothing under it. **Hollis**, 107/102, 32 S. E. 846, 73 Am. St. R. 114.

In life only included in conveyance for benefit of woman and her children here. **Peavy**, 131/110, 62 S. E. 47.

Not in esse, conveyance to, when void. **Davis**, 113/211, 38 S. E. 827, 84 Am. St. R. 233.

Clerical error, when disregarded. **Durrence**, 117/388, 43 S. E. 726.

Code, validity of deed executed before adoption of, determined by prior law. **Sapp**, 131/435, 62 S. E. 529.

Color of title, deed as. **Carpenter**, 131/547, 62 S. E. 983, 127 Am. St. 241; **Dodge**, 131/549, 62 S. E. 987; **William-**

son, 136/222, 71 S. E. 138; **Cox**, 139/25, 76 S. E. 357.

By void deed of wife to husband. **Floyd**, 129/668, 59 S. E. 909. By unauthorized deed of trustee. **Maynard**, 129/710, 59 S. E. 798.

Deed may be, though made without full authority. **English**, 128/733, 58 S. E. 351. Void deed good as. **McLendon**, 128/531, 57 S. E. 886.

Deed too indefinite in description of land, not operate as **Luttrell**, 121/699, 49 S. E. 691; **Pitts**, 121/704, 49 S. E. 693; **Priester**, 123/375, 51 S. E. 330; **Crawford**, 122/814, 50 S. E. 958.

Deed without power of attorney admissible as. **Gilmer**, 146/721, 92 S. E. 67.

Defined and discussed. **Street**, 118/470, 45 S. E. 294.

Defined; deed to defraud creditors, good as against persons not affected by the fraud. **Moore**, 123/424, 426, 51 S. E. 351.

Executor's deed was not, as to a greater interest than would pass under the will. **Sanders**, 123/4, 50 S. E. 976.

Not shown by unexecuted deed. **Causey**, 143/8, 84 S. E. 58. Admissibility of deed as, when not admissible as conveyance. **Harden**, 143/727, 85 S. E. 874; **Megahee**, 143/738, 85 S. E. 877.

Sheriff's deed void as evidence of title may be. **Wood**, 145/259, 88 S. E. 980.

Sheriff's deed pursuant to void sale is. **Benedict**, 122/412, 50 S. E. 162.

Sheriff's deed to land sold under justice's court fi. fa., good as, though no entry of "no personalty." **Wade**, 109/270, 34 S. E. 52, 572.

Sheriff's deed under execution against wild land for tax. **Greer**, 104/552, 30 S. E. 943.

Sufficiency of deed as. **Connell**, 111/805, 35 S. E. 667.

Unrecorded deed as. **O'Brien**, 123/427, 51 S. E. 405; **Floyd**, 129/669, 59 S. E. 909.

Void deed good as. **Bond**, 133/166, 65 S. E. 376, 134 Am. St. R. 199.

Void deed not admitted as, unless so offered in connection with proof of

possession. **Weeks**, 133/472, 66 S. E. 168, 134 Am. St. R. 213.

What sufficient description. **Harriss**, 126/330, 55 S. E. 59; **Bennett**, 126/411, 55 S. E. 177.

Whether good as, not dependent on whether ordinarily intelligent person would believe title good. **Lee**, 103/355, 30 S. E. 356.

Common source, older of two deeds from, prevails, unless attacked. **Moore**, 146/176, 91 S. E. 14.

Condition against alienation, effect of. **Cowart**, 140/435, 452, 79 S. E. 196.

Deed not on, reciting, as part of consideration, an agreement to discharge an obligation of grantor. **Bower**, 126/39, 54 S. E. 918.

Reversion and right to enter on breach of. **Moss**, 126/196, 54 S. E. 968.

Of previous contract merged into deed absolute, reciting that condition has been complied with. **Augusta Land Co.**, 140/519, 79 S. E. 138.

Effect of conditions and reservations in deed to railroad company conveying right of way and land for depot purposes. **Tift**, 103/580, 30 S. E. 266.

So construed as to render breach remediable in damages rather than by forfeiture, if room therefor. When words of conveyance would not permit this. **Jones**, 132/785, 64 S. E. 1081.

Interest of one grantee, not the other, conditions or covenants applied to. **Gilreath**, 139/688, 689, 77 S. E. 1127.

Subsequent, action to recover land as on breach of, held demurrable. **Augusta Land Co.**, 140/519, 79 S. E. 138.

Subsequent, avoidance of deed on failure to perform; action not supported by hearsay evidence. **Groover**, 145/714, 89 S. E. 761.

Subsequent, construction of deed containing. **Peterson**, 137/179, 73 S. E. 15.

Subsequent, conveyance of fee subject to; forfeiture and re-entry not shown. **Chastain**, 147/622, 95 S. E. 216.

Condition—(Continued).

Subsequent, created by provision as to avoidance on failure to support grantor. *Wilkes*, 138/407, 75 S. E. 353.

Subsequent, created; what necessary to entitle grantor to re-enter for breach thereof; grantee treated as owner until re-entry by grantor. *Wadley Lumber Co.*, 130/135, 60 S. E. 836.

Subsequent, deed not construed as grant of estate on, unless intent be so manifested. *Thompson*, 133/540, 66 S. E. 270.

Subsequent, forfeiture of estate on violation of. Evidence, and charge to jury. *Groover*, 148/794, 98 S. E. 503.

Subsequent, forfeiture on happening of, not provided for by deed here construed. *Lemon*, 141/448, 81 S. E. 118.

Subsequent, not added by parol evidence offered to explain consideration. *Huger*, 137/205, 53 S. E. 385.

Subsequent, on breach of title, reverted to grantor; not to one showing no title. *Stanley*, 140/306, 78 S. E. 1064.

Subsequent, right to enter and repossess on non-compliance with, how waived. *Wilkes*, 138/407, 75 S. E. 353.

Subsequent, strict construction against. *Self*, 139/400, 77 S. E. 562.

Subsequent, words did not create. *Self*, 139/400, 77 S. E. 562.

Consideration, and delivery, parol evidence as to. *Holmes*, 106/861, 33 S. E. 216.

Actually different from that expressed, explainable by testimony; recital not a covenant. *Coles*, 148/21, 95 S. E. 963.

Admissibility of parol evidence to explain. *Stone*, 111/45, 36 S. E. 321, 50 L. R. A. 356; *Harkless*, 115/350, 41 S. E. 634.

Agreement was not invalid for want of, beyond conveyance of land. *Read*, 139/499, 77 S. E. 642.

A promise to do an illegal or immoral thing bars equitable aid to either party to. *Watkins*, 118/372, 45 S. E.

Consideration—(Continued).

262. But deed so founded is no reply to proof of prior possession of one not in privity with grantor. *Ib.* 375, 45 S. E. 260.

Assumption of debt as part of, in deed to land subject to security deed, did not create contractual relation enabling prior grantee to sue assuming grantee. *Graves*, 21 A. 544, 94 S. E. 833.

Deed can be shown by parol evidence to be wanting in, though value recited. *Carter*, 136/700, 71 S. E. 1047.

Deed of gift from mother to daughter not set aside for want of. *Dunn*, 139/741, 78 S. E. 122.

Evidence relevant on issue of. *Morehead*, 131/808, 63 S. E. 507.

Effect of recital. *Garnett*, 23 A. 432, 98 S. E. 363.

Evidence sufficient for submission of issue of fact as to. *Yates*, 148/246, 96 S. E. 427.

Expressed as love for grantee and small sum of money; intention, how ascertained. *Shackelford*, 135/30, 68 S. E. 838.

Expressed, parol proof as affecting; cases collected and discussed. *Hester*, 128/534, 58 S. E. 165. Consideration expressed, one sum for different lots, parol proof of how much applied to each admitted. *Goette*, 128/179, 57 S. E. 308.

Effect of failure in, by not furnishing support to grantor. *Wilkes*, 138/407, 75 S. E. 353; *Groover*, 145/741, 89 S. E. 761.

Deed was not defeated, by failure of (support not furnished). *Davis*, 135/116, 69 S. E. 172.

Failure to perform, gives right of action for breach of contract, not for declaring deed void, unless vendee insolvent, etc., *Wood*, 133/752, 66 S. E. 951.

Finding that deed was without valuable consideration, not authorize conclusion that it was without consideration good in law. *Carter*, 115/676, 42 S. E. 46.

Consideration—(Continued).

For recitals and covenants in, by one not necessary party to. *Ferris*, 110/116, 35 S. E. 347.

Furnished by husband supported deed made to wife. *Read*, 139/500, 77 S. E. 642.

Grantee's assumption of debt between third persons. *Wright*, 12 A. 308, 77 S. E. 106.

Illegal or immoral, grantor and privies concluded, regardless of change of possession or not. *Beard*, 120/1019, 48 S. E. 400.

Illegal, to suppress criminal prosecution; grantee can not invoke equitable estoppel against true owner who deceived him by causing him to believe the grantor had title. *Deen*, 128/265, 57 S. E. 427.

Inadequacy of. *Thomas*, 118/588, 45 S. E. 449.

Inadequacy of, as ground for setting aside. *Sumner*, 121/1, 6, 48 S. E. 727.

Inadequacy of, as ground for setting aside, where mental weakness alleged. *Eagan*, 115/130, 41 S. E. 493. May be inquired into, when. *Martin*, 115/866, 42 S. E. 279; *Shackelford*, 135/30, 68 S. E. 838; *Goette*, 128/180, 57 S. E. 308.

Inquired into, always. *Watkins*, 118/380, 45 S. E. 260.

Inquiry into, and explanation of. *Coldwell Co.*, 138/233, 236, 75 S. E. 425.

Inquired into when required by principles of justice. *Thrower*, 144/372, 87 S. E. 301.

Rule as to inquiry into, has limitations. *L. & N. R. Co.*, 133/17, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Issue as to what of; not as to attack by maker or creditor for inadequate consideration. *Washington*, 145/814, 90 S. E. 43.

Mere inadequacy of, in absence of fraud, not invalidate deed of one competent to contract. *Martin*, 115/868, 42 S. E. 279.

Nominal. *Martin*, 115/866, 42 S. E. 279.

Consideration—(Continued).

Nominal, not actually paid, immaterial. *Gaston*, 120/518, 48 S. E. 188. Recital of, prevents deed from being voluntary on face. *Pierce*, 120/536, 48 S. E. 128.

Nominal; recital of "other valuable consideration," how construed. *Taylor*, 147/761, 95 S. E. 289.

Not expressed ("for and in consideration of — dollars"), deed good. *Jewell*, 109/241, 34 S. E. 337.

Not paid, not invalidate. *Martin*, 115/866, 42 S. E. 279.

Not purely voluntary, being in part to pay off debts. *Smith*, 110/278, 34 S. E. 582.

Of original conveyance supports later acknowledgment and ratification. *Mills*, 148/23, 95 S. E. 699.

Other than that expressed, not shown by parol. *Anderson*, 112/532, 37 S. E. 766.

Parol agreement as part of, not admissible in action for damages by grantor against grantee for failing to perform. *L. & N. R. Co.*, 133/15, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Parol evidence admissible to show; and (where grantee has not taken possession) that deed was intended only to secure debt. *Bashinski*, 133/39, 65 S. E. 152.

Parol evidence of agreement to support, etc., where deed expressed love, etc. *Wood*, 133/752, 66 S. E. 951.

Parol proof that deed reciting valuable consideration was a deed of gift, admissible. *American Ins. Co.*, 6 A. 736, 65 S. E. 787.

Partly illegal, partly legal, inseparable; deed not upheld. Grantee may be subrogated. *Bond*, 133/160, 65 S. E. 376, 134 Am. St. R. 199.

Partly illegal, semble, deed void. *Watkins*, 118/380, 45 S. E. 260.

Purporting to be for value, may be shown to be voluntary. *Leggett*, 114/714, 40 S. E. 736.

Reference in statement of, was no part of granting clause. *Pace*, 148/507, 97 S. E. 70.

Consideration—(Continued).

Recital of, in incomplete deed, no estoppel. **Van Dyke**, 119/830, 47 S. E. 192.

Recital of, not conclusive. **Willingham**, 106/71, 31 S. E. 799.

Recital of, to what extent an estoppel; how far open to explanation. **Jewell**, 109/246, 34 S. E. 337.

Recited, \$1,500; real consideration promise of grantee, shown by parol. **Pavlovski**, 134/705, 68 S. E. 511.

Services by minor to his father. **Parsons**, 119/42, 45 S. E. 697.

Stated, one dollar, not paid, valid; sum named recoverable. **Southern Bell Tel. Co.**, 117/1001, 44 S. E. 885.

Support of grantor; construed to mean for the rest of his life. **Kytile**, 128/388, 57 S. E. 748.

Support of grantor, not furnished; conveyance not defeated. Remedy of grantor. **Byrd**, 22 A. 354, 96 S. E. 10.

Surrender and satisfaction of existing debt, bona fide, operates as present consideration. **Sutton**, 144/588, 87 S. E. 799.

Tainted with fraud; rule that courts will not aid parties in pari delicto. **Sewell**, 128/827, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Valid, payment of debt of grantor, though barred by limitation statute. **Walker**, 139/547, 549, 77 S. E. 795.

Valid, services of real estate agent; though no money paid. **Webster**, 142/806, 83 S. E. 941.

Valuable, indicated by recital of running railroad over grantor's land and of \$1. **S. A. L. Ry.**, 132/187, 63 S. E. 1098.

Valuable though small, not voluntary. **Watkins**, 118/379, 45 S. E. 260.

Construction and interpretation, rules as to. **Augusta Land Co.**, 140/519, 522, 79 S. E. 138.

Court's power as to charging jury, on construction and effect of, discussed. **Berry**, 117/964, 967, 44 S. E. 824.

Cardinal rule of, at common law and under code. **Wadley Lumber Co.**, 130/137, 60 S. E. 836.

Construction—(Continued).

Favorable to grantee; rule when applied. **Thompson**, 137/311, 73 S. E. 640.

In equity, when not obtained. **Howell**, 137/710, 74 S. E. 255.

Of deed (including quantum of estate), a question of law. Duty of instruction to jury. **Heatley**, 135/153, 68 S. E. 783.

Of unambiguous instrument (as to whether it is a deed or a mortgage), not a question for the jury. **Nelson**, 129/36, 58 S. E. 697.

As deed passing title as security, though designated therein as "mortgage." **Troup Co.**, 23 A. 750, 99 S. E. 541.

Preferred that upholds every part of. **Fields**, 118/575, 45 S. E. 437.

Rendering operative, adopted, rather than one invalidating. **Shackelford**, 129/793, 59 S. E. 772.

To uphold, not defeat, intention of grantor. **Price**, 148/137, 141, 96 S. E. 4.

As conveyance of land in dispute. **Madden**, 148/294, 96 S. E. 497.

As conveying all the interest of grantors in land acquired under will. **Boyd**, 148/839, 98 S. E. 490.

As to right of reconveyance on repayment, if land offered for sale. **Peterson**, 132/366, 64 S. E. 268.

According to intent of the parties, looking to the whole instrument. **Peterson**, 120/968, 48 S. E. 372; **Self**, 139/400, 77 S. E. 562; **Mayor &c. of Savannah**, 148/317, 96 S. E. 625; **Woodbery**, 148/715, 98 S. E. 472; **Shepherd**, 147/365, 94 S. E. 237; **Taylor**, 147/761, 95 S. E. 289.

In connection with contemporaneous written agreement. **Turner Lumber Co.**, 20 A. 682, 93 S. E. 301.

In connection with other writings. **McCreary**, 103/528, 29 S. E. 960.

Most favorable to grantee. **Shackelford**, 129/794, 59 S. E. 772.

Strict, as grant on condition subsequent that may result in forfeiture. **Thompson**, 133/543, 66 S. E. 270.

Contingency or possibility, void conveyance of, where nothing shows present right to sell future benefit. **Dailey**, 144/395, 87 S. E. 479.

Contradiction of unambiguous recitals not allowed, where no reformation sought for fraud or mutual mistake. **Gibson**, 143/104, 84 S. E. 373.

Contract, conveyance and separate instrument construed as one. **Read**, 139/499, 77 S. E. 642.

Of grantee to allow grantor fishing and hunting privileges, right of action on. **Read**, 134/524, 68 S. E. 94.

Resulted from dedication of land for street, on consideration of carrying out previous understanding. **City of Atlanta**, 145/680, 89 S. E. 764.

To convey, conditional on ability of vendor to acquire title, valid, when. **Northington**, 119/851, 47 S. E. 200, 110 Am. St. R. 210.

Corporators, deed to, did not pass legal title to corporation afterwards created. **McCandless**, 112/291, 37 S. E. 419.

Cotenants, effect of deed by one of. **Walton**, 142/388, 82 S. E. 1067.

County in description incorrect. **Nichols**, 115/600, 41 S. E. 991.

Covenant binding on grantee who does not sign, but takes possession under. **L. & N. R. Co.**, 145/594, 89 S. E. 693.

Binding on successors of covenantor. **L. & N. R. Co.**, 145/594, 89 S. E. 693.

To open and pave public street, when enforced. **L. & N. R. Co.**, 145/594, 89 S. E. 693.

Breach of, that would not divest title, not a proper construction of this deed. **Jones**, 132/782, 64 S. E. 1081.

Damages from breach of. Rescission not decreed. **Self**, 139/400, 77 S. E. 562; **Hughes**, 139/406, 77 S. E. 584.

Limited to right or interest conveyed, and to the land included in conveyance. **White**, 131/460, 62 S. E. 590, 15 Ann. Cas. 1198.

Measure of damages from breach of. **White**, 131/462, 62 S. E. 590, 15 Ann. Cas. 1198.

Not condition subsequent, by statement that land conveyed is to be used for street extension. **City of Atlanta**, 135/379, 69 S. E. 571.

Of easement not implied from description, as to part of alley already encroached upon. **Wimpey**, 137/325, 73 S. E. 586.

Of easement ran with land. **Planters Gin Co.**, 146/694, 92 S. E. 220.

Personal, and running with land; definition and difference in consequences. **Nelson**, 135/577, 69 S. E. 1118.

Personal, not running with land, in deeds construed. **Henderson Lumber Co.**, 148/69, 96 S. E. 263.

Personal, when not enforced against assignee of original purchaser. **Nelson**, 135/572, 69 S. E. 1118.

Running with land, stipulation for damages held not to be, though so styled in deed. **Atlanta R. Co.**, 108/635, 34 S. E. 184.

Bound grantee on acceptance. **Kytte**, 128/388, 57 S. E. 748.

Of warranty, covering timber and turpentine privileges, construed. **Brantley**, 102/850, 29 S. E. 486.

Passing with the land to subsequent purchaser. **Tucker**, 103/409, 30 S. E. 283.

Running with land, and personal covenants, defined. Extinguishment of, by merger of estates. **Muscogee Mfg. Co.**, 126/211, 54 S. E. 1028, 7 L. R. A. (N. S.) 1139. **Nugent**, 124/153, 52 S. E. 158; **Walker**, 124/275, 52 S. E. 904; **Wilcox**, 124/484, 52 S. E. 896, 4 L. R. A. (N. S.) 466, 4 Ann. Cas. 437; **Atlanta Ry. Co.**, 124/929, 53 S. E. 701, 6 L. R. A. (N. S.) 436, 110 Am. St. R. 215. Running with land, covenants here were not. **Waycross R. Co.**, 115/7, 41 S. E. 271.

So construed as to make intention effective, collecting it from whole instrument and circumstances of its execution. **Atlanta Ry. Co.**, 124/930, 53 S. E. 701, 6 L. R. A. (N. S.) 436, 110 Am. St. R. 215; **Reidsville &c. R. Co.**, 13 A. 357, 79 S. E. 187.

Stipulation for running cars on railroad was not, but was conditional limitation. **Atlanta R. Co.**, 108/635, 34 S. E. 184.

To support grantor, right of action for breach of, survived to legal representatives of his estate; measure of damages for breach of. **Kytie**, 128/388, 57 S. E. 784.

Date of deed unimportant, if dated and recorded before another acquired interest. **Brice**, 118/129, 44 S. E. 843.

Parol proof as to. **Sasser**, 9 A. 178, 70 S. E. 980.

Defeasance clause, effect of. **Owens**, 13 A. 419, 79 S. E. 225; **Troup Co.**, 23 A. 750, 99 S. E. 541; **Dewit**, 17 A. 666, 87 S. E. 1100.

Effect of its absence. **Self**, 139/402, 77 S. E. 562.

Here not such as to render instrument a mere mortgage. **Pitts**, 115/285, 41 S. E. 570.

In instrument rendered it a mortgage. **Lane**, 21 A. 292, 94 S. E. 325; **Lubroline Oil Co.**, 104/380, 30 S. E. 409.

Stipulation here not such as would render bill of sale a mortgage. **Hill**, 18 A. 652, 90 S. E. 175.

Deficiency in land conveyed. **White**, 7 A. 764, 68 S. E. 271.

When did not entitle purchaser to apportionment of price. **Kendall**, 126/343, 55 S. E. 41; **Goette**, 128/179, 57 S. E. 308.

Deposit of, as security, not put title in holder or create lien. **Atlanta Bkg. Co.**, 115/53, 41 S. E. 247.

Description, acreage in, was of the essence of, where the entire description was: "333 acres of land in the southeast corner of" a specified lot. **Strickland**, 123/396, 51 S. E. 248.

Adjusted to land conveyed, by parol evidence. When effect not controlled by parol evidence of mistake whereby more land was conveyed than intended. **Thompson**, 137/308, 73 S. E. 640.

Administrator's deed not void for lack of, containing what data. Aliunde evidence when admissible. **Davis**, 143/99, 84 S. E. 426.

Description—(Continued.)

Aided by parol. **Bennet**, 126/414, 55 S. E. 177; **Cherry Lake Co.**, 10 A. 339, 73 S. E. 610; **Balchin**, 10 A. 434, 73 S. E. 613.

Aid of conveyance by extrinsic evidence to identify land. **Callaway**, 147/17, 92 S. E. 538; **Boney**, 147/30, 92 S. E. 636; **Hayes**, 148/700, 98 S. E. 345; **Boyd**, 148/839, 98 S. E. 490.

Ambiguous and conflicting, admissibility of evidence. **Pelham**, 137/39, 72 S. E. 417.

Ambiguous, or uncertain, not void; aided by parol evidence. **Follendore**, 110/359, 35 S. E. 676; **Simmons**, 138/605, 75 S. E. 671.

Application of maxim, *falsa demonstratio non nocet cum de corpore constat*. **Thompson**, 137/310, 73 S. E. 640. When part to be rejected under this maxim. **Johnson**, 119/196, 45 S. E. 992, 110 Am. St. R. 166.

Applied by evidence to subject-matter (location of boundary). When too vague and indefinite to convey any particular land. **Glover**, 132/797, 798, 65 S. E. 64. See **Hawkins**, 132/266, 271, 63 S. E. 852.

Applied to subject-matter by extrinsic evidence. **Parrish**, 142/116, 82 S. E. 420; **Haley**, 142/390, 82 S. E. 1058; **Bunger**, 142/448, 83 S. E. 200, Ann. Cas. 1916C, 173; **Glover**, 142/862, 83 S. E. 939; see **Bush**, 142/157, 82 S. E. 530.

Applied to subject-matter by evidence; deed not void for want of. **Fuller**, 137/66, 72 S. E. 504.

As all of named lot except 50 acres in southeast corner, when sufficient. **Osteen**, 131/209, 62 S. E. 37, 127 Am. St. R. 212.

As showing sale by tract, not by acre. **Georgia &c. Development Co.**, 134/674, 68 S. E. 514.

As "the plantation of A. L. Clark; known as Clark's place," in designated State, county, and district; whether sufficient. **Clark**, 13 A. 787, 79 S. E. 1134.

As to number of feet in width of lot, whether exclusive of alley de-

Description—(Continued.)

scribed. **St. John**, 111/156, 36 S. E. 610.

As to quantity, mistake in. **White**, 7 A. 764, 68 S. E. 271. See **Bryan**, 7 A. 712, 67 S. E. 1048; **Milner**, 9 A. 659, 71 S. E. 1123. Effect of shortage. **Ib.**; **Owens**, 9 A. 179, 70 S. E. 989.

Bill of sale of a boiler "and attachments thereto;" parol testimony admitted to show what was conveyed under the term "attachments." **Strickland**, 20 A. 320, 93 S. E. 24.

Boundaries in; monuments prevail over conflicting courses and distances. **Leverett**, 121/534, 49 S. E. 591.

"Bounded by" a named person means bounded by his land. **Smith**, 21 A. 741, 95 S. E. 19.

By number of acres and boundaries on three sides, when not void for uncertainty. **Walden**, 128/128, 57 S. E. 323. By giving number of acres and two sides (right angle), when not void. **Payton**, 128/514, 58 S. E. 50, 11 Ann. Cas. 163. Judicial cognizance taken as to shape and size of lot. **Ib.**

By reference to a will of record, in which grantor was a legatee, sufficient. **Yopp**, 148/539, 97 S. E. 534.

By reference to other papers, as affecting subsequent purchaser. **Talmadge**, 105/550, 31 S. E. 618.

By lot and block numbers here presumed to refer to a certain map or plan. **Acme Brewing Co.**, 115/495, 500, 42 S. E. 8.

Cases as to indefiniteness, distinguished. **Cherry Lake Co.**, 10 A. 341, 73 S. E. 610.

Certainty of, the same for admissibility as conveyance and as color of title. **Harden**, 143/727, 85 S. E. 878.

Covered land in dispute; slight evidence. **Oliver**, 102/157, 29 S. E. 159.

Deed construed as to. **Aiken**, 134/873, 68 S. E. 937.

Deed void for failure in. **Taylor**, 133/385, 387, 65 S. E. 850.

Definite and unambiguous; northern half of designated lot. **McAleer**, 146/369, 91 S. E. 114.

Description—(Continued.)

Evidence sufficient to define area covered by deed. **Roberts**, 146/495, 91 S. E. 675.

General and particular, if repugnant, latter prevails. **Osteen**, 131/209, 62 S. E. 37, 127 Am. St. R. 212.

General, as to county, yields to particular description locating land in other county. **McCaskill**, 138/124, 74 S. E. 1032.

Imperfect or impossible; invalidity of deed did not prevent acquiring equitable title. **Wall**, 143/417, 85 S. E. 325.

Inaccuracy in, did not affect title conveyed. **Pulliam**, 144/696, 87 S. E. 1032.

Included only land within boundaries of named survey of lot. Distance would yield. **Haley**, 142/390, 82 S. E. 1058.

Inconsistencies in. **Shackelford**, 129/794, 59 S. E. 772.

In contract referred to, contract admissible in evidence. **Slippen**, 136/37, 70 S. E. 672.

Incorrect as to county. **Nichols**, 115/600, 41 S. E. 991.

Incorrect or false, when deed not void. **McCaskill**, 138/126, 74 S. E. 1032.

In deed controls, as against testimony as to setting stake, etc., before deed executed. **Bell**, 133/5, 65 S. E. 90.

Indefinite, but made certain by location of grantee's roadbed. **Martin**, 139/807, 77 S. E. 1060.

Indefinite, when not held void. **Tumlin**, 108/523, 34 S. E. 171.

Indefinite; key lost by added words. **Jackson**, 148/314, 96 S. E. 630.

Instrument held sufficiently definite as. **Allen**, 146/204, 91 S. E. 22.

Insufficiency of, did not avoid deed in partitioning proceeding. **Pulliam**, 144/696, 87 S. E. 1032.

Insufficient, as to dower interest referred to; contention not meritorious. **Ellis**, 147/316, 93 S. E. 895.

Left blank, with oral understanding that grantee may afterward insert it,

Description—(Continued.)

deed void. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

Lot described as on a named street, without stating in what State, county, or city, presumed in city named in caption. **Horton**, 117/72, 43 S. E. 786.

Lot number wrong, rejected as surplusage, when. **Johnson**, 119/196, 45 S. E. 992, 100 Am. St. R. 166.

Made to cover land not intended by grantor; no cause of action alleged. **Cobb Real Estate Co.**, 138/589, 75 S. E. 652.

Material to determine whether sale was by the acre or by the tract. **Parks**, 108/375, 33 S. E. 1005.

Matter merely of, not of essence of contract. **Land Trust Co.**, 22 A. 389, 95 S. E. 1006.

Mistake in, as to number of lot, parol explanation of, when not permissible. **Oliver**, 121/836, 49 S. E. 743, 104 Am. St. R. 185.

"More or less," effect of. **Kendall**, 126/344, 55 S. E. 41; **Owens**, 9 A. 179, 70 S. E. 989; **Milner**, 9 A. 659, 71 S. E. 1123; **Gordon**, 19 A. 795, 92 S. E. 290. "240 acres, more or less," not sufficient to define actual shortage in acreage. **Powell**, 138/397, 75 S. E. 318.

"More or less" covers deficiency in acres (in sale by the tract), if no intentional fraud. **Finney**, 116/758, 42 S. E. 1020.

"More or less," effect of, in deed to 80 acres, "more or less," where there was a shortage of 26 acres. **Bryan**, 7 A. 712, 67 S. E. 1048. See **White**, 7 A. 764, 68 S. E. 271.

"More or less," when does not relieve warranty as to deficiency of acres. **Godwin**, 106/196, 32 S. E. 114.

Monuments referred to as boundaries usually control courses and distances; rule not inflexible. **Thompson**, 137/311, 73 S. E. 640.

Not invalid for want of, if it furnish key to identify the land. **Price**, 148/138, 96 S. E. 4; **Boyd**, 148/839, 98 S. E. 490.

Description—(Continued.)

Not such as to show that a sale of land was by the number of feet stated therein. **Land Trust Co.**, 22 A. 388, 95 S. E. 1006.

Not sufficient to identify land in connection with plat in evidence. **Lane**, 148/650, 97 S. E. 852.

Not too indefinite to be applied to subject-matter by aid of parol evidence. **Perkins**, 147/122, 92 S. E. 875.

Not too uncertain, where one boundary is land of person named. How line located. **Moody**, 131/522, 62 S. E. 821.

Not too indefinite. **Johnson**, 121/766, 49 S. E. 757. Description of land in petition here, not sufficiently full, but amendable. **Luquire**, 121/624, 49 S. E. 834. When explainable by parol. **Leverett**, 121/534, 49 S. E. 591; **Ga. & Ala. Ry.**, 121/708, 49 S. E. 700.

Not too indefinite in bill of household effects, office furniture, drugs, books, instruments, etc. **Balchin**, 10 A. 434, 73 S. E. 613. Sufficiency of description in bill of sale of staves. **Esteve**, 10 A. 286, 73 S. E. 534.

Not too indefinite, in conveyance of a part of larger tract. **Guest**, 145/593, 89 S. E. 687.

Not too indefinite, in lease of "all the timber suitable for turpentine purposes," growing on a lot designated by number, district, county and State, though number of acres was not stated. **Cherry Lake Co.**, 10 A. 339, 73 S. E. 610.

Not too indefinite to be applied by evidence, in sheriff's deed to land. **Humphrey**, 143/704, 85 S. E. 830.

Not too vague and uncertain to be aided by extrinsic evidence. **Parker**, 101/160, 28 S. E. 681, 65 Am. St. R. 291.

Not uncertain; boundaries given as land of named owners and described watercourses. **Morris**, 145/562, 89 S. E. 704.

Not void for insufficiency of. **Manning**, 144/9, 85 S. E. 1039; **Allen**, 139/648, 77 S. E. 1054.

Description—(Continued.)

Not void for uncertainty. Name of property prevails over further imperfect description. **Bunger**, 142/448, 83 S. E. 200, Ann. Cas. 1916C, 173; **Glover**, 142/862, 83 S. E. 939.

Of boundary as land of person with defective title, when sufficient. **O'Farrell**, 134/696, 68 S. E. 485.

Of boundary; high-water and low-water marks. **Aiken**, 134/873, 68 S. E. 937.

Of city lot; rear boundary, how fixed by measurement. **Bell**, 133/5, 65 S. E. 90.

Of land lot by number, district and county; judicial notice taken as to shape and size. **Payton**, 128/514, 58 S. E. 50, 11 Ann. Cas. 163.

Of lines of city lot with qualification by words "more or less," effect of. **Hammond**, 140/260, 263, 78 S. E. 897.

Of merchandise, notes, and accounts, not too indefinite. **Myers**, 14 A. 520, 81 S. E. 595.

Of personal property, sufficiency of. **International Harvester Co.**, 13 A. 1, 78 S. E. 770.

Of property excepted in, when sufficiently certain. **Hollywood**, 133/271, 65 S. E. 777.

Of realty in exception, held not too vague and insufficient. **Stewart**, 145/590, 89 S. E. 686.

Of property in bill of sale, what sufficient. **Charles**, 4 A. 730, 62 S. E. 493.

Of several lots, not all contiguous, did not apply to single body of land. **Durham Coal Co.**, 142/725, 83 S. E. 683.

Omitting part of boundaries did not render deed void for uncertainty; could be aided by parol. **Horton**, 117/72, 43 S. E. 786.

"One mouse-colored mare mule, five years old," sufficient. **First National Bank**, 10 A. 504, 73 S. E. 753.

Parol, of instrument, when admissible. **Sasser**, 9 A. 178, 70 S. E. 980.

Plat of survey as part of. **Cobb Real Estate Co.**, 138/589, 75 S. E. 652.

Description—(Continued.)

Referring to exhibit, sufficient; later date of exhibit explained. **Baxter**, 126/369, 54 S. E. 1036.

Repugnance in; number of acres not controlling. **Collinsville Co.**, 123/839, 51 S. E. 666.

Requisites of description, the same whether based on good or valuable consideration. **Boyd**, 148/839, 840, 93 S. E. 490.

Rule for construing. **Aiken**, 134/876, 68 S. E. 937.

Rule for testing sufficiency of; and same rule applies to sheriff's deed. **Moody**, 131/524, 62 S. E. 821.

Showing land intended, mention of other and inapplicable circumstances will not defeat. **Thompson**, 137/308, 73 S. E. 640.

Showing sale by tract, not by acre; effect of deficiency in quantity. **Kendall**, 126/343, 55 S. E. 41; **Goette**, 128/179, 57 S. E. 308.

So general that personal property can not be distinguished, deed void for uncertainty; and not aided by parol evidence. **Ferguson**, 124/669, 52 S. E. 886.

Sufficiency of. **Pallew**, 16 A. 149, 84 S. E. 597; **Hurt**, 12 A. 144, 83 S. E. 921; **King**, 18 A. 173, 89 S. E. 175; **Thomas Co.**, 120/881, 43 S. E. 363; **Nussbaum**, 9 A. 57, 70 S. E. 259.

Sufficiency of, aided by parol. **McLean**, 3 A. 660, 60 S. E. 332.

Sufficient. **Smith**, 123/790, 66 S. E. 1086.

Sufficient, with aid of extrinsic evidence. **Shackelford**, 129/791, 59 S. E. 772.

Sufficient, in administrator's deed in connection with order of sale. **Hayes**, 148/700, 98 S. E. 345.

Sufficiently certain. **Vaughn**, 112/518, 37 S. E. 752.

Sufficiently certain to identify land, if it furnish key. Aid of parol evidence. **Swint**, 147/467, 94 S. E. 571. Contrast **Barnes**, 147/478, 94 S. E. 564.

Description—(Continued.)

Too vague to furnish key to its identification. **Tippins**, 123/417, 51 S. E. 410.

Too vague and indefinite to identify any particular land, deed inoperative. **Crawford**, 122/814, 50 S. E. 958. Parol evidence, when admissible to aid. *Ib.*

Too indefinite: "About 50 acres on the west side of or in the northwest corner of lot of land No. 524, in the 8th district of" a designated county, insufficient, in petition for recovery of land. **Clark**, 129/291, 58 S. E. 841.

Too indefinite: "175 acres of land, more or less, of lot of land No. 49 in the 6th district." **McSwain**, 129/176, 58 S. E. 655.

Too indefinite (all turpentine timber on "lot No. 225 owned by me"). **Powell**, 12 A. 350, 77 S. E. 183.

Too indefinite, deed void as conveyance and as color of title. **Whitehead**, 127/774, 56 S. E. 1004.

Too indefinite for paper to operate as color of title. **Priester**, 123/375, 51 S. E. 330; **Luttrell**, 121/699, 49 S. E. 691; **Pitts**, 121/704, 49 S. E. 693.

Too indefinite, in bond for title, obligor suing for purchase-money can not object. **Strickland**, 123/399, 51 S. E. 348.

Too indefinite to convey title to any of tract. **Huntress**, 116/351, 42 S. E. 513. As to a point of location. **Fenn**, 116/944, 43 S. E. 378.

Too vague and uncertain; "153 1/3 acres off of lot of land No. 42." **James**, 140/168, 169, 78 S. E. 721.

Too vague to identify particular tract; instrument ineffective as conveyance or as color of title. **Youmans**, 144/375, 87 S. E. 273.

What covered by. **Moss**, 126/202, 54 S. E. 968.

What sufficient. **Atlanta R. Co.**, 125/540, 54 S. E. 736.

What sufficient; when may be aided by parol. **Johnson**, 119/196, 45 S. E. 992, 100 Am. St. R. 166. See **Brown**, 119/154, 155, 46 S. E. 410.

Description—(Continued.)

When not aided by parol evidence. **Tippins**, 123/417, 51 S. E. 410.

What sufficient for color of title. **Harriss**, 126/330, 55 S. E. 59; **Bennett**, 126/411, 55 S. E. 177.

When sufficiently definite. Parol evidence to identify. **King**, 145/65, 88 S. E. 960.

When sufficiently definite as to land; identification by parol evidence. **Fletcher**, 20 A. 653, 93 S. E. 313. See **Mortgage**.

When false parts will be rejected, to uphold deed. **Shackelford**, 129/794, 59 S. E. 772.

When not so indefinite as to invalidate levy, advertisement, and sheriff's deed. **Hawkins**, 131/347, 62 S. E. 285.

When not too indefinite to be aided by aliunde evidence; and aliter. **Marshall**, 143/526, 85 S. E. 601.

When not too indefinite to be made certain by parol. **Brice**, 118/128, 44 S. E. 843.

When not too vague and uncertain. Extrinsic evidence to aid. **Parker**, 101/161, 28 S. E. 681, 65 Am. St. R. 291.

Words of, "known as the Wooldridge plantation," are general. **Osteen**, 131/209, 62 S. E. 37, 127 Am. St. R. 212.

Words of, not enlarged or diminished by reference to plat, but given efficacy. **Wooten**, 138/433, 77 S. E. 375.

Wrong, as to lot number; when ground for reforming deed. **Venable**, 129/537, 59 S. E. 253.

Wrong, effect of, as to grantee in subsequent deed. **Lee**, 103/355, 30 S. E. 356.

Descriptio personæ, official character added to name is. Effect on title. **McCranie**, 139/794, 77 S. E. 1064, 45 L. R. A. (N. S.) 1073.

Deed to P., vice-president of a bank, is to P., not the bank. **Greenfield**, 122/303, 50 S. E. 111.

Deed to A, "guardian of" B, put title in A individually. **Arrowood**, 119/623, 46 S. E. 871.

Words "as guardian of," etc., not so held as to grantee. *Fleck*, 144/372, 87 S. E. 1055.

Words "trustee for," etc., before first code took effect; not afterward. *Peavy*, 131/109, 62 S. E. 47. See *Sapp*, 131/433, 62 S. E. 529; *Dodge*, 131/549, 62 S. E. 987.

Effect of descriptive added to name of grantor or grantee. *Board of Education*, 128/162, 57 S. E. 359.

Effect of describing grantor or grantee as A, "executor of" B. *Board of Education*, 128/162, 57 S. E. 359. See *Payton*, 128/517, 58 S. E. 50, 11 Ann. Cas. 163; *Garrett*, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167; *Dozier*, 117/789, 45 S. E. 61.

Distribution per capita, not per stirpes, under deed here construed. *Duke*, 138/172, 75 S. E. 1.

Easement, not fee, passed, under deed conveying perpetual right to use of stairway in common with grantor, though words appropriate to a conveyance in fee were used. *Bale*, 123/99, 50 S. E. 990.

Appurtenant, created. *McElwaney*, 131/97, 62 S. E. 20.

For street conveyed; not title in fee. *Mayor &c. of Savannah*, 148/317, 96 S. E. 625.

In alley, when passes as appurtenant to land conveyed. How lost by encroachment. *Wimpey*, 137/325, 73 S. E. 586.

In land for overflow of water; deed construed. *Central Georgia Power Co.*, 141/843, 82 S. E. 243, Ann. Cas. 1916-D, 1020.

Effect of absolute and unconditional conveyance of easement or right of way. *L. & N. R. Co.*, 133/15, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Part of land conveyed for, and not so used, when not recoverable on allegations made. *Harrold*, 131/360, 62 S. E. 326.

Rather than conveyance of land, granted by this deed, giving effect to

intent. *L. & N. R. Co.*, 139/542, 77 S. E. 801.

Endorsement, entry, or memorandum on, when may be relied on without proof of its execution. Burden of explaining such entry, on party offering deed in evidence. *McBrayer*, 122/245, 50 S. E. 95.

Entire instrument given effect if possible, construing the whole together. *Baxter*, 106/350, 32 S. E. 94.

Equitable mortgage, deed treated as, when. *Ellison*, 7 A. 214, 66 S. E. 631.

Foreclosure of deed as. *Stone*, 101/290, 28 S. E. 840.

Estoppel against attack on, facts not sufficient to raise. *Wall*, 143/417, 85 S. E. 325.

Against repudiating deed and reclaiming property for want of authority to convey. *Walker*, 139/548, 77 S. E. 795.

By acquiescence in; heirs not held to have acquiesced in executor's unauthorized deed of which they had no notice. *Hosch Lumber Co.*, 123/336, 51 S. E. 439.

By attesting. *American Freehold Co.*, 119/341, 46 S. E. 426. Estoppel of true owner of land by his attesting deed of another person thereto, when he knows its contents. *Equitable Loan Co.*, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

By deed; issue raised. *McLean*, 148/114, 95 S. E. 985.

By deed, with knowledge of facts. *Parks*, 137/578, 73 S. E. 839.

By ratification, deed was not admissible to show, as against executory devisees. *Murrelle*, 142/41, 82 S. E. 456.

By recitals in. *Willingham*, 106/71, 31 S. E. 799; *Grant*, 117/188, 43 S. E. 401; *Janes*, 123/46, 50 S. E. 954; *Coldwell*, 138/233, 236, 75 S. E. 425; *E. Tris Napier Co.*, 147/9, 92 S. E. 650.

By recital; doctrine rests on what postulate. *Toland*, 144/236, 86 S. E. 1089.

By recital does not extend beyond specific fact stated. **Toland**, 144/236, 86 S. E. 1089.

By recitals; general rule subject to exception. **Thrower**, 144/372, 87 S. E. 301.

By representation of grantor concerning his deed. **Shackelford**, 135/30, 68 S. E. 838.

By signing as agent of another. **American Freehold Co.**, 119/341, 46 S. E. 426.

Doctrine of, when not apply to incomplete deed. **Van Dyke**, 119/830, 47 S. E. 192.

Facts did not raise. **Lawman**, 132/485, 64 S. E. 544.

From denying grantor's title, extends how far. **Taylor**, 133/387, 65 S. E. 850.

Grantee who did not accept deed not bound by recitals therein. **Cox**, 142/488, 83 S. E. 115.

Grantor not prevented from proving consideration different from that expressed. **L. & N. R. Co.**, 133/21, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860; **Bashinski**, 133/41, 65 S. E. 152.

Not effective against minors as to setting apart of year's support. **Jones**, 137/681, 74 S. E. 51.

Not raised against grantee in older deed, who had set up later deed to defeat former action. **Burtchael**, 143/31, 84 S. E. 55.

Not raised by, against recovery of damages from detention of water. **High Shoals Mfg. Co.**, 136/23, 70 S. E. 641.

Not raised against widow who conveyed, to pay decedent's debt, land set apart as year's support. **Gibbs**, 136/261, 71 S. E. 136.

Of claim under. **Ford**, 140/670, 79 S. E. 576. No estoppel by. **Echols**, 140/678, 79 S. E. 557.

Of grantee and his privy. **King**, 144/319, 87 S. E. 22.

Of grantee by his conduct and sayings. **Smith**, 127/483, 56 S. E. 640.

Of grantee did not result here. **Janes**, 110/627, 36 S. E. 69.

Of grantor by recital of boundary. **Schreck**, 131/489, 62 S. E. 705. By his plea of purpose in executing. **Tune**, 131/528, 62 S. E. 976.

Of grantee to deny validity of. **Moran**, 129/601, 59 S. E. 281. When not estopped from denying maker's title. **Roberts**, 129/608, 59 S. E. 289.

Of one making deed as executor, to set up individual title. **Callaway**, 123/350, 51 S. E. 477.

Of owner by consent, where deed to his realty is made by another. **Parrott**, 105/97, 31 S. E. 417.

Of State, not result from tax deed, when. **State**, 119/730, 46 S. E. 872.

Taking deed from executor, purporting to convey the property devised, not estop devisee, from claiming land devised but not embraced in the deed, though afterwards sold by executor. **Johnson**, 115/401, 41 S. E. 644.

To set up title in third person. **Campbell**, 111/200, 36 S. E. 621.

To set up after-acquired title, rule as to, not applied to deed in nature of quitclaim. **Baxter**, 126/362, 54 S. E. 1036.

To deny trust, as against beneficiaries. **Coursey**, 141/66, 80 S. E. 462.

To deny right of way. **Wimpey**, 137/328, 73 S. E. 586.

To deny title. **McDonald**, 117/122, 43 S. E. 422; **Southern Bell Tel. Co.**, 117/1004, 44 S. E. 885.

To assert invalidity for usury; not against maker. **Wacasio**, 142/113, 82 S. E. 442.

To attack for usury, after judgment upon maker and his creditors. **Miller**, 133/187, 65 S. E. 410.

Whether resulted from wife's consent, written on deed of husband to her land, not decided. **Glover**, 115/696, 42 S. E. 40.

Widow, whose children signed deed conveying year's-support land, not estopped to deny their title. **Hancock**, 133/734, 66 S. E. 949.

Evidence, admissibility of, in determining as to validity. **Shackelford**, 135/30, 68 S. E. 838.

Extrinsic, establishment of boundary by aid of. **Moody**, 131/521, 62 S. E. 821.

That muniment of title was a will and not a deed was rightly rejected. **Isler**, 134/192, 67 S. E. 854.

Exception agreed on, but omitted from instrument; facts preventing its later correction. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

As to granite, construed. **Collinsville Co.**, 123/831, 51 S. E. 666.

Of certain land conveyed by former deed excluded title from grantee, though former conveyance not delivered, etc. **Ga. Vitriified Brick Co.**, 148/650, 98 S. E. 77.

Of described parcel, clause not construed as. **Georgia &c. Ry.**, 145/817, 90 S. E. 44.

Of land conveyed, not void for uncertainty. **Farmers Bank**, 145/449, 89 S. E. 409.

Of land includes what quantity in corner of land lot. **Farmers Bank**, 145/449, 89 S. E. 409.

Of timber for turpentine, in conveyance construed. **Stewart**, 145/590, 89 S. E. 686.

Of "widow's dower which is assigned," effect of. **Ellis**, 147/316, 93 S. E. 895.

Was not of particular land set apart as dower, but of the dower interest or life-estate. **Hawkins**, 131/347, 62 S. E. 285.

Whether land in dispute referred to by, was issue of fact. **Gillespie**, 132/355, 64 S. E. 80.

Of a road twelve feet wide, on the north line of six acres conveyed, construed. Fee to whole six acres passes, including the road on it. **McElwaney**, 131/97, 62 S. E. 20.

Executed contract, deed is, and binds parties where illegality not apparent on face. Cases not within rule. **Jordan**, 143/146, 84 S. E. 543, L. R. A. 1915 D. 1122.

Executor's deed, recorded, admissible as color of title; and though signed as individual, not as executor. **Dodge**, 131/549, 62 S. E. 987.

V. II—28.

Construed as made in representative capacity, and as execution of power of sale. **Hart**, 130/504, 61 S. E. 26.

In execution of his power as such; not a mere conveyance of his interest. **Wiggs** 147/444, 94 S. E. 556. **Contra**, **Patterson**, 147/472, 94 S. E. 563.

Under partition proceedings among tenants for life, how far effective. **Watkins**, 130/805, 62 S. E. 32.

In exercise of power of sale in will must be signed by both executors, where qualified. **Daugharty**, 134/650, 68 S. E. 472. When necessary for coexecutors to join in. **Hosch Lumber Co.**, 123/339, 51 S. E. 439.

Statute, executor's or administrator's deed on sale otherwise than as prescribed by, passes no title. **Hawks**, 141/422, 81 S. E. 200.

Made by exexcutrix, on illegal sale, passed title to her interest as tenant for life or widowhood. **Hawks**, 141/423, 81 S. E. 200.

Exhibit to, referred to for description. **Baxter**, 126/362, 369, 54 S. E. 1036.

Falsa demonstratio non nocet; applied, in order to uphold deed. **Shackelford**, 129/794, 59 S. E. 772.

First deed prevails; ancient maxim. **Thompson**, 137/310, 73 S. E. 640.

Forfeiture on breach of condition subsequent. **Harrold**, 131/363, 62 S. E. 326.

Formal words of conveyance, what unnecessary in. **Horton**, 117/72, 43 S. E. 786. Not construed to create interest in land where contrary intent is clear from the instrument as a whole. **Snook**, 117/369, 43 S. E. 775.

Future interest, deed to, when invalid. **Trammell**, 115/874, 42 S. E. 246.

Gift by husband's buying land and causing conveyance of it to his wife to be made. **Marchant**, 147/37, 92 S. E. 863; **Jackson**, 146/675, 92 S. E. 65; **Jackson**, 129/716, 59 S. E. 776.

Construed as, instead of sale contract. **Rich**, 147/488, 94 S. E. 566.

Deed in consideration of promise to do an illegal or immoral thing is not. **Watkins**, 118/372, 45 S. E. 262. Testimony as to making of deed; when

irrelevant in suit on parol gift. **Thompson**, 118/543, 45 S. E. 439.

Deed of, by wife to husband, requires no confirmation by court. **Roland**, 131/581, 62 S. E. 1042.

Deed shown to be, though reciting money consideration. **American Ins. Co.**, 6 A. 736, 65 S. E. 787.

Not shown by proof that wife's deed to husband was without consideration. **Frank**, 148/858, 98 S. E. 497.

Of right of way, estoppel of donor by, whose land is damaged by granting, etc. **L. & N. R. Co.**, 132/174, 63 S. E. 898; **S. A. L. Ry.** 132/181, 63 S. E. 1098.

Parol agreement on taking deed of, excluded on objection of donee. **L. & N. R. Co.**, 132/174, 63 S. E. 808.

Whether conveyance was. **Shackelford**, 135/30, 68 S. E. 838.

Wife's deed to husband upheld as. **American Ins. Co.**, 6 A. 736, 65 S. E. 787.

Grant conveys also that without which it would be of no effect. Application of rule limited. **Muscogee Mfg. Co.**, 126/211, 54 S. E. 1028, 7 L. R. A. (N. S.) 1139.

From State, not including land in dispute, admissible to illustrate boundary line. **Morris**, 145/562, 89 S. E. 704.

So construed as to give benefits intended to be conferred. **Wimpey**, 137/328, 73 S. E. 586.

Grantor, person not named in deed as, but who was one of the signors, was bound as such. **Sterling**, 129/309, 58 S. E. 828, 13 L. R. A. (N. S.) 298, 121 Am. St. R. 224, 12 Ann. Cas. 201.

Guardian's deed, under order of judge of superior court in vacation for sale or exchange of land, prior to act of 1889, void. **Mills**, 111/276, 36 S. E. 673, 52 L. R. A. 934.

Habendum, limitation in, of estate named in granting clause. **Davis**, 113/211, S. E. 827, 84 Am. St. R. 233.

Heir's title divested by conveyance, by widow, of land set apart as year's support. **Ragan**, 130/474, 61 S. E. 1.

Home, provision for, when meant abode and not support, and conveyed no

interest enforceable by ejectment. **Stiles**, 122/635, 50 S. E. 484.

Homestead beneficiaries concluded by their deed made after reaching majority. **Douglas**, 112/423, 37 S. E. 722.

Estate subsisting, conveyance by son of head of family after father's death, how effectual. **Anderson**, 114/1016, 41 S. E. 593.

Under constitution of 1868, deed inoperative, as to, conveyed reversionary interest. **Aiken**, 139/15, 76 S. E. 359.

Reversionary interest in, conveyed by. **Huntress**, 110/427, 35 S. E. 671, 78 Am. St. R. 105.

Reversionary interest in, conveyed by deed from head of family. **Carrie**, 145/184, 88 S. E. 949.

Conveyance of. **Willingham**, 106/71, 31 S. E. 799.

Conveyance of, by head of family, reconveyance to his widow, her sole legatee acquires no title or interest superior to other members of the family. **Darsey**, 131/208, 62 S. E. 20.

Deed to wife and children instead of to head of family, conveying land in which homestead funds invested, not prevent exemption from applying. **Johnson**, 105/454, 33 S. E. 676.

Under constitution of 1877, no valid deed to land pending, without order of court. **Denson**, 140/134, 78 S. E. 768.

Waiver as to specific property, a circumstance tending to show instrument was intended as mortgage. **Powers**, 7 A. 594, 67 S. E. 685.

Husband's deed to wife, not approved by superior court, did not extinguish, by merger, her deed from his creditor. **Hamilton**, 126/28, 45 S. E. 926.

To wife, on money consideration, assailable by wife and her privies, not husband or his heirs. **Munroe**, 145/215, 88 S. E. 947.

To wife, right to assail validity of, personal to her and her privies in blood or estate. **Scaife**, 134/1, 67 S. E. 408.

To wife, validity of, **Hartz**, 13 A. 404, 79 S. E. 230.

To wife construed, as touching power of sale of life-estate and remainder. **Vernoy**, 133/654, 66 S. E. 928.

Identification of property conveyed. **Fletcher**, 20 A. 653, 93 S. E. 313.

By extrinsic evidence, where deed describes it. **King** 145/65, 88 S. E. 960; **Morris**, 145/562, 89 S. E. 704. **Incomplete**, by reason of blanks in, effect of. **VanDyke**, 119/830, 832, 47 S. E. 192.

Inconsistent clauses; former prevails. **Lewman**, 132/484, 64 S. E. 544.

Former of, prevails; but intention ascertained from whole instrument. **Parker**, 140/789, 80 S. E. 12.

How construed. **Burch**, 14 A. 154, 155, 80 S. E. 664.

Rule as to. **Rogers**, 126/744, 56 S. E. 93.; **Walker**, 139/548, 77 S. E. 795; **Gilreath**, 139/688, 690, 77 S. E. 1127.

Indorsement of mere transfer of deed, does not pass title. **McCook**, 146/93, 90 S. E. 713.

Inheritance in future, attempt to convey interest by, when not effective. **Dailey**, 144/395, 87 S. E. 479.

Instrument agreeing to secure son of maker against loss, by making conveyance, itself conveyed no title. **Dumas**, 130/736, 61 S. E. 710.

In form of deed, conveying land, at the maker's death, not testamentary. **Kyle**, 128/387, 57 S. E. 748.

In form of deed conveying present interest, attested as such, and delivered, not testamentary. **Price**, 148/137, 96 S. E. 4.

Treated as conveyance passing title in *præsenti*, with possession postponed to death of grantor. **Griffith**, 120/582, 48 S. E. 129; **Jones**, 120/693, 48 S. E. 190; **Guthrie**, 105/86, 31 S. E. 40; **West**, 115/277, 41 S. E. 602; **Brice**, 118/128, 44 S. E. 843; **Watkins**, 118/372, 375; 45 S. E. 260, 262; **Sharpe**, 123/794, 51 S. E. 706; **Isler**, 134/192, 67 S. E. 854; **Pruett**, 136/757, 72 S. E. 30. **Mays**, 137/27, 72 S. E. 408; **Collier**, 146/476, 91 S. E. 551; **Gay**, 108/739, 32 S. E. 846.

Aliter, paper testamentary, with three witnesses, treated as a will, though

somewhat in form of a deed. **Dye**, 108/741, 33 S. E. 848.

Construed as deed with reservation of estate for life; not as a will. **Carter**, 136/700, 71 S. E. 1047.

Construed as deed, not will, though containing the words "This deed to take effect at my death." **West**, 115/277, 41 S. E. 602.

Construed as deed, instead of will, notwithstanding habendum clause indicating testamentary disposition. **Wynn**, 112/214, 37 S. E. 378.

Construed as deed, not as testamentary. **Hughes**, 135/468, 69 S. E. 818.

Conveyed absolute title to all minerals in land, etc., and was not mere lease or option to purchase such interest. **Lanham**, 135/429, 69 S. E. 552.

Here was deed passing title, and not mortgage. **Pitts**, 115/281, 41 S. E. 570.

Here was not deed, but was tetamen-tary. **Barnes**, 107/436, 33 S. E. 399.

In form of deed, with clause for defeasance on payment by certain date, was mortgage. **Scott**, 124/1000, 53 S. E. 453.

Construction of, as mortgage, not deed passing title. **Massilon Engine Co.**, 19 A. 487, 91 S. E. 786; **Lane** 21 A. 292, 94 S. E. 325. See **Lankford**, 21 A. 10, 93 S. E. 499; **Puffer**, 111/798, 36 S. E. 927; **Horton**, 117/72, 43 S. E. 786.

Conveyance construed as a will; effective at death; delivery postponed, and never effected. **Baxter**, 147/438, 94 S. E. 544.

Testamentary, not admissible as a deed. **Jackson**, 148/314, 96 S. E. 630.

Was deed though it reserved right to sell and convey. **Hamilton**, 127/762, 56 S. E. 1022. Though grantor retain control of sale of land for life. **Shelton**, 148/128, 96 S. E. 3.

Without words of conveyance, signed by heir at law, how effective. **Allen**, 146/204, 91 S. E. 22.

Intention of parties to be ascertained and given effect, if possible. **Walker**, 139/548, 77 S. E. 795; **L. & N. R. Co.**, 139/

Intention—(Continued).

542, 77 S. E. 801; *Gilreath*, 139/688, 690, 77 S. E. 1127; *Burney*, 134/141, 147, 67 S. E. 712; *McCraw* 134/579, 68 S. E. 324.

Of the parties from whole instrument to be ascertained, if possible, and made effective. *Lewman*, 132/484, 64 S. E. 544; *Thompson*, 133/540, 66 S. E. 270; *Vernoy*, 133/657, 66 S. E. 928; *Cooper*, 133/771, 66 S. E. 1090, 29 L. R. A. (N. S.) 291; *Wadley L. Co.*, 130/136, 60 S. E. 836; *Georgia &c. Ry.*, 145/817, 90 S. E. 44.

Of maker not shown by parol. *Smith*, 130/532, 60 S. E. 1000; *Terrell* 108/658, 34 S. E. 345. Intended as power of attorney, not shown by parol. *Anderson*, 112/532, 37 S. E. 766.

Controls, in referring words of survivorship. *Sterling*, 139/21, 76 S. E. 375.

Facts and circumstances at time of execution considered. *Shackelford*, 135/30, 68 S. E. 838.

Given effect on form and language of deed in light of circumstances and contemporaneous acts. *Brice*, 118/130, 131, 44 S. E. 843.

If legal, governs. *Fields*, 118/575, 45 S. E. 437.

Not to convey certain land covered by deed, not testified to. *Oliver*, 102/157, 29 S. E. 159.

Not truly expressed, alleged by cross-action and shown by parol evidence. *Sheppard*, 114/411, 40 S. E. 282.

Of grantor, as to persons to take, gathered from whole instrument. *Stiles*, 122/636, 50 S. E. 484.

Of grantor controls, how ascertained. *Duke*, 138/172, 75 S. E. 1; *Collier*, 146/476, 91 S. E. 551.

Of grantor, in determination of estate conveyed. *Megahee*, 146/498, 91 S. E. 677.

Of grantor in trust deed to be gathered from entire instrument. *Shepherd*, 147/365, 94 S. E. 237; *Taylor*, 147/761, 770, 95 S. E. 289.

Of grantor to be effectuated; if doubtful, result leading to injustice avoided. *Woodbery*, 148/715, 98 S. E. 472.

Intention—(Continued).

Of maker, as to character of instrument, how determined. *West*, 115/277, 41 S. E. 602.

Of maker sought, and technical rules of construction disregarded, when. *Burch*, 14 A. 154, 155, 80 S. E. 664.

Of maker to pass title at once determines character of instrument. *Shelton*, 148/128, 96 S. E. 3; *Price*, 148/137, 96 S. E. 4.

Of parties, as to whether voluntary. *Martin*, 115/866, 42 S. E. 279.

Of parties, proof of circumstances illustrative of. *Reidsville &c. R. Co.*, 13 A. 362, 79 S. E. 187.

Of parties, whole habendum clause considered and given effect to ascertain. *Lawson*, 142/16, 82 S. E. 233.

Interests conveyed, equality of (where not defined), presumed as to grantees, not grantors. *Taylor*, 133/385, 387, 65 S. E. 750.

Under will, when too intangible and fleeting to be sold. *Harber*, 126/777, 55 S. E. 928.

Language of deed, considered as a whole. *Sterling*, 139/21, 76 S. E. 375.

Legatees and heirs at law who contracted with attorneys to recover their interest, effect of subsequent conveyance by, to another person. *Bunn*, 122/833, 50 S. E. 914.

Levy and sale, deed filed for, inoperative where grantor had no title. *Ray*, 147/265, 93 S. E. 418.

Conveyance by plaintiff to defendant, when prerequisite. *Owens*, 8 A. 221, 68 S. E. 1009. Effect of. *McIntire*, 8 A. 803, 70 S. E. 198.

Reconveyance for, must be both filed and recorded before levy made. *Dodge*, 138/787, 76 S. E. 52; *Coates*, 142/237, 239, 82 S. E. 649.

Reconveyance for, not complying with statute; error in allowing withdrawal. *Wade*, 145/394, 89 S. E. 407.

Reconveyance for, not effective where sale void. *Coleman*, 101/304, 28 S. E. 861.

Quitclaim for, no general relinquishment of title; no placing title in heirs

of debtor. **Humphrey**, 142/291, 82 S. E. 885.

Reconveyance for, not treated as passing title back to debtor unconditionally. **Coleman**, 101/304, 28 S. E. 861. Mere escrow. **Evans**, 118/882, 883, 45 S. E. 693; **Chalker**, 138/673, 75 S. E. 1055; **Malsby Co.**, 138/768, 76 S. E. 53; **Dodge**, 138/787, 76 S. E. 52.

Quitclaim for, not authorized by grantee indorsing note and security deed to his principal. **Sheppard**, 114/411, 40 S. E. 282.

Quitclaim for, recorded; requirement to accept tender thereafter. **Flemister Grocery Co.**, 147/416, 94 S. E. 229.

Reconveyance for, defective. **Austin**, 115/1, 41 S. E. 264. Conveyance necessary before levy on interest of holders of bond for. **Black**, 115/15, 41 S. E. 259.

See Deeds, 8, catchword Reconveyance.

Lien, deed of bargain and sale is not.

Peagler, 143/11, 84 S. E. 59, Ann. Cas. 1917A, 232.

Outstanding, did not attach to property conveyed only to enable grantee to sell or pledge it for owner. **Simpson Grocery Co.**, 148/410 (dissent, 413), 96 S. E. 872.

Reserved for unpaid purchase-money, subsequent purchaser took with notice and subject to. **Atlanta L. Co.**, 106/498, 32 S. E. 606.

Life-estate reserved by grantor, paper not testamentary. **Kyle**, 128/387, 57 S. E. 748.

Limitation expressed in, did not require injunction against use of land for public building. **Trapnell**, 146/617, 91 S. E. 771.

Not created by provision as to avoidance of deed on failure to support grantor. **Wilkes**, 138/407, 75 S. E. 353.

Over upon definite failure of issue. **Davis**, 113/211, 38 S. E. 827, 84 Am. St. R. 233.

On title conveyed; clause construed. **Gilreath**, 139/688, 690, 77 S. E. 1127.

Limitations and restrictions, how construed. **Wadley Co.**, 130/137, 60 S. E. 836.

Marriage settlement executed in 1854; survivorship of power of sale to succeeding trustee. **Wadley**, 138/223, 75 S. E. 325.

Married woman, deed to, in 1848, as basis to recover land. Need of evidence that husband's right did not attach. **Causey**, 143/7, 84 S. E. 58.

Conveyance by, to raise encumbrances from her property, validity of. **Bond**, 133/160, 65 S. E. 376, 134 Am. St. R. 199.

Merger of contract into deed containing additional contingent provision, effect of. **Nelson**, 135/572, 69 S. E. 1118.

Of executory contract in writing into deed, not cause for excluding it from evidence. **Power**, 141/429, 81 S. E. 225.

Of lien not effected by mortgages with agreement for later execution of deed. **Lankford**, 21 A. 1, 93 S. E. 499.

Of mortgage into deed. **Woodside**, 113/879, 39 S. E. 400, 84 Am. St. R. 267; **Coleman**, 115/510, 42 S. E. 5.

Of mortgage into deed, did not result, grantee not so intending. **Ferris**, 110/102, 35 S. E. 347.

Negotiations prior to deed merged therein. **Bell**, 133/8, 65 S. E. 90; **Hall**, 122/254, 50 S. E. 106.

Mineral interest in land passed by deed conveying in fee simple. **Wheeler**, 135/603, 69 S. E. 1112.

Reservation of, in conveyance of land, construed. **Collinsville Co.**, 123/831, 51 S. E. 666.

Mortgage, admissibility of proof that deed was intended as. **Pusser**, 132/284, 64 S. E. 75, 22 L. R. A. (N. S.) 571.

Mortgagee took, in satisfaction, subject to judgment younger than mortgage but older than deed. **McIntyre**, 101/682, 28 S. E. 989.

Negotiable instruments are not deeds. **Beach**, 101/366, 28 S. E. 110.

Notice of former conveyance charged to vendee by recital in his deed. **Stubbs**,

143/56, 84 S. E. 126; *Hitchcock*, 143/377, 85 S. E. 119; *Zorn*, 108/78, 34 S. E. 303.

Deed taken with, is subject to equity of third person. *Stone*, 107/524, 33 S. E. 861.

Parol evidence admitted to apply description to land. *Shackelford*, 129/795, 59 S. E. 772; *Hall*, 122/254, 50 S. E. 106. Parol identification of land described in. *Johnson*, 119/196, 45 S. E. 992, 100 Am. St. R. 166. Parol explanation of description. *International Harvester Co.*, 13 A. 1, 78 S. E. 770.

As to consideration. *Goette*, 128/180, 57 S. E. 308; *Hester*, 128/534, 58 S. E. 165; *Harkless*, 115/350, 41 S. E. 634. As to contents. *Acme Brewing Co.*, 115/405, 503, 42 S. E. 8.

Contradicting or explaining recitals; when received, and when not. *Coldwell Co.*, 139/233, 236, 75 S. E. 425.

In aid of, when admissible, and when not. *Huntress*, 116/355, 42 S. E. 513.

Not admissible to vary, by showing reservation of title to fixtures. *Lanier*, 7 A. 227, 66 S. E. 626.

Of reservation of part of thing conveyed, not admissible. *Cobb*, 126/621, 55 S. E. 935.

Of agreement when deed given, excluded. *L. & N. R. Co.*, 132/174, 63 S. E. 898; *L. & N. R. Co.*, 133/15, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Of agreement, before or at execution, varying description of land, not competent. *O'Neal*, 148/62, 95 S. E. 709. Parol agreement as to crossings not engrafted on absolute conveyance of right of way. *Hutchens*, 144/312, 87 S. E. 28. Parol contract not engrafted on, without first reforming. *Waters*, 124/353, 52 S. E. 425.

Of consideration and of fraud, in procuring, when admissible. *Pavlovski*, 134/704, 705, 68 S. E. 511.

Of declarations of the parties after execution; that grantee had not the money consideration; that grantor kept possession of land, etc., when not ad-

missible. *Leathers*, 132/213, 63 S. E. 1118.

Of limited purpose of deed absolute in form, when admissible. *Simpson Grocery Co.*, 148/410 (dissent 413), 96 S. E. 872.

That vendor provided vendee with means to discharge incumbrance, admissible. *Thrower*, 144/372, 87 S. E. 301.

To show intention to except part of lot from warranty, not received. *Godwin*, 106/196, 32 S. E. 114.

As to intention of parties to, when admissible. *Nelson*, 129/36, 58 S. E. 697.

That deed was not intended to become binding until the happening of a future event, not admitted. *Williams*, 128/307, 57 S. E. 801.

Not admitted to vary effect of deed. *Poole*, 19 A. 631, 91 S. E. 1052.

Of agreement before foreclosure sale in pursuance of which deed was made, that the grantee should bid in the property and would allow reasonable time for redemption. *Board of Education*, 128/162, 57 S. E. 359.

Did not contradict, as to agreement on boundaries and practical location of land. *Parrish*, 142/115, 82 S. E. 520. See *Haley*, 142/390, 82 S. E. 1058.

That land had been deeded, not admissible. *Leake*, 5 A. 104, 62 S. E. 729.

Of agreement to convey, not held to vary or modify. *Holmes*, 106/860, 33 S. E. 216.

"Part," conveyance of, referred to physical portion; not to undivided interest. *Pulliam*, 144/696, 87 S. E. 1032.

Partition between heirs not prevented by deed from mother to two children. *Cox*, 142/488, 83 S. E. 115.

Partnership interest in realty, deed here was sufficient to convey. *McRae*, 111/65, 36 S. E. 604, 55 L. R. A. 513.

Tenancy in common created by deed to firm; surviving partner's deed, not convey interest of decedent. *Anderson*, 125/668, 54 S. E. 679.

Plat, effect of reference to, in deed **Schereck**, 131/489, 62 S. E. 705.

Referred to; how effective. In case of conflict, descriptive words prevail over plat. **Wooten**, 139/433, 77 S. E. 375.

Possibility without present interest, deed attempting to convey, void. **Trammell**, 115/874, 42 S. E. 246.

Power of attorney authorizing conveyance of "all real estate belonging to us, or in which we have any interest, situated in the State of Georgia," not too indefinite. **Lanier**, 123/625, 51 S. E. 632.

Deed absolute in form shown to be, by parol evidence. **Simpson Grocery Co.**, 148/410 (dissent, 413), 96 S. E. 872.

No presumption that deed was made pursuant to, in favor of person out of possession. **Gorham**, 137/139, 72 S. E. 893.

Not present, presumption as to, after lapse of time, **Street**, 118/477, 45 S. E. 294.

Terminates on death of maker, where not coupled with an interest. **Anderson**, 125/663, 54 S. E. 679.

To make deed and receive the money therefor, not authorize credit sale; deed in pursuance of such sale, voidable. **Whitley**, 121/521, 49 S. E. 600.

Power of sale, exercise of. **Flint River Lumber Co.**, 134/672, 68 S. E. 436; **Daugharty**, 134/650, 68 S. E. 472; **Mayo**, 134/737, 68 S. E. 497. See **Taylor**, 134/479, 68 S. E. 70; **Jones**, 134/553, 68 S. E. 303.

By executor, his parol agreement and a deed of the devisees was no execution of. **Satterfield**, 132/256, 64 S. E. 60.

Conferred on trustee by marriage settlement in 1854 survived to succeeding trustee. **Wadley**, 138/223, 75 S. E. 325.

Consent to exercise of, shown by signing deed with trustee here. Reformation of deed, as affecting consent to. **Clarke**, 113/22, 38 S. E. 323.

Deed held to be intended as execution of. **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167; **Payton**, 128/517, 58 S. E. 50, 11 Ann. Cas. 163.

Reference to instrument conferring, insufficient here to show that deed was executed in pursuance of. **Clarke**, 113/22, 38 S. E. 323.

Deed not referring to, when construed as an execution of. **Middlebrooks**, 126/232, 55 S. E. 34.

Execution of, by deed without direct reference thereto. **Grayson**, 140/467, 472, 79 S. E. 124.

Deed construed as in execution of, though not referring to it. Covenant in excess of power, how far effective. **Hilton & Dodge Lumber Co.**, 141/653, 81 S. E. 1119.

Instrument in execution of, without direct reference to it. Aliter if maker own an interest. **Wiggs**, 147/444, 94 S. E. 556; **Patterson**, 147/472, 94 S. E. 562.

Deed was in execution of; did not refer merely to interest of the grantor. **Mahoney**, 133/784, 66 S. E. 1082.

Does not pass by mere indorsement transferring deed. **McCook**, 146/93, 90 S. E. 713.

Exercised by deed of tenant for life; remainder interest passed thereby. **Nort**, 136/287, 71 S. E. 471.

Exercised and abandoned, judgment for debt given. **Ray**, 106/492, 32 S. E. 603.

To P., vice-president of a bank, not exercisable by S., cashier of that bank. How property sold where grantor dies. **Greenfield**, 122/303, 50 S. E. 111.

In trust deed not protect creditor taking conveyance from trustee in payment of individual debt. **Cohen**, 105/339, 31 S. E. 205.

In trust deed, when expired on arrival of minor beneficiaries at majority. **Parrott**, 105/93, 31 S. E. 417.

Was no personal trust; it belonged to office of trustee, and could be exercised by successor of trustee named. **Vernoy**, 133/654, 66 S. E. 928.

Power of sale—(Continued).

Joint exercise of, when necessary.

Board of Education, 128/156, 57 S. E. 359.

Not revoked by death of grantor; how exercised thereafter; twelve months exemption from suit not applied. **Baggett**, 126/465, 55 S. E. 250.

Petition for injunction against insufficiently advertised sale, properly dismissed after time for sale had passed; proper order as to costs. **Baggett**, 126/463, 55 S. E. 250.

Proceeding under, is not in nature of suit. **Baggett**, 126/465, 55 S. E. 250.

Providing for sale after advertising 30 days, authorized sale on any week day thus advertised. **Crawford**, 121/706, 49 S. E. 677.

Reference to source of title showed that deed was made in execution of. **Mahoney**, 133/784, 66 S. E. 1082.

Trustee's deed construed as if it embodied language of will conferring. **McDonald**, 142/147, 82 S. E. 539.

Valid exercise of, without possession, and without notice other than advertisement. **King**, 141/63, 80 S. E. 312.

Reserved in deed, to sell and reinvest for benefit of grantees, when not well executed. **Ellis**, 110/611, 36 S. E. 97.

"Premises," meaning of, in conveyance or lease, discussed. **Snook**, 117/370, 43 S. E. 775.

Prescriptive title, void deeds supporting claim of. **Rogers**, 146/373, 91 S. E. 414; **Spurlin**, 146/420, 91 S. E. 479.

Present estate, deed ineffective for want of words in conveying. **Caldwell**, 140/736, 79 S. E. 853.

Not conveyed to grantee (trustee) and her children by this deed. **Heyward-Williams Co.**, 140/504, 79 S. E. 133.

Presumed, on review, to cover land in dispute, when not properly made part of brief of evidence. **Patterson**, 136/664, 71 S. E. 1177.

Quitclaim, as color of title. **Johnson**, 115/794, 42 S. E. 96.

Conveyance of standing timber treated as. Liability of vendor who

executes second conveyance of same land. **McLendon**, 2 A. 424, 426, 58 S. E. 690.

For church and school purposes, annulment of, not obtained where trust failed. **Moor**, 138/359, 75 S. E. 423.

No estoppel to set up title afterward acquired. **Morrison**, 116/459, 42 S. E. 729; **Taylor**, 116/795, 43 S. E. 58; **Baxter**, 126/362, 54 S. E. 1036.

Reserving rights against original grantee, no defense to suit against him. **Read**, 139/500, 77 S. E. 642.

Taking of, does not itself negative good faith of purchaser and shift burden of proof. **Marshall**, 136/544, 71 S. E. 893.

Railroad, absolute conveyance of land to, "without reservation," gives right to close private way. **Carlton**, 143/516, 85 S. E. 863, Ann. Cas. 1917 A. 497.

Construction of deed conveying land for railroad purposes. Effect of use for other purposes. **Lawson**, 142/14, 20, 82 S. E. 233.

Right of way, etc., construction of deed conveying. **L. & N. R. Co.**, 139/542, 77 S. E. 801.

Right of way given as boundary, grantee has no right of action for excavation thereon, not physically invading his lot. **Darnall**, 134/656, 68 S. E. 584.

Ratification of void deed. **Sikes**, 20 A. 470, 93 S. E. 111; **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

When implied from non-action. **Whitley**, 121/521, 49 S. E. 600.

Instrument of, need not be of same formality as deed, or have more than one witness. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

Recitals in deeds. **Huxford**, 124/187, 52 S. E. 439; **Equitable Loan Co.**, 124/203, 52 S. E. 599, 3 L. R. A. (N. S.) 879. Recitals and covenants in, as estoppel or waiver. **Ferris**, 110/102, 35 S. E. 347; **Grant**, 117/188, 43 S. E. 401.

In administrator's deed, when sufficient. **Floyd**, 129/675, 59 S. E. 909.

In ancient deed. *Lanier*, 123/626, 51 S. E. 632.

As notice to mortgagee. *Johnson*, 105/454, 33 S. E. 676.

As to heirs at law, etc., effect of. *Lanier*, 123/631, 632, 51 S. E. 632.

Bind parties and privies. *Atlanta Loan Co.*, 106/503, 32 S. E. 606.

Competency of, as evidence. *Nixon*, 137/516, 73 S. E. 747.

Not binding one not in privity to grantor. *Lee*, 138/646, 75 S. E. 1051.

Stranger to deed, not bound by. *Dickey*, 110/315, 35 S. E. 291.

Not evidence as against others than parties to. *Dixon*, 112/158, 37 S. E. 180.

Not prima facie evidence of power to make deed. *Waller*, 114/384, 40 S. E. 254.

In quitclaim deed of heirs, not evidence. *Marchant*, 147/38, 92 S. E. 863.

When explainable. *Coldwell Co.*, 138/233, 236, 75 S. E. 425.

When not binding. *Jenkins*, 109/35, 34 S. E. 355.

When do not estop. *Janes*, 123/46, 50 S. E. 954.

Of consideration, effect of. *Southern Bell Tel. Co.*, 117/1001, 44 S. E. 885.

Of fact not taken as true, as against one not a party or privy to conveyance. *Gilmer*, 146/721, 92 S. E. 67.

Reference in deed to resolution of church association, effect of. *Stanley*, 140/306, 78 S. E. 1064.

Repugnant clauses. *Barnes*, 107/441, 33 S. E. 399.

In description; recital as to quantity of land, not control, when. *Collinsville Co.*, 123/841, 51 S. E. 666. Repugnant parts of description. *Shackelford*, 129/794, 59 S. E. 772. Repugnance between general and particular description; latter prevails. *Osteen*, 131/209, 62 S. E. 37, 127 Am. St. R. 212.

Intention gathered from whole instrument. *Cobb*, 129/379, 58 S. E. 862.

Intention gathered from whole instrument; reservation in habendum

clause, not referred to in granting clause, was not void for repugnance. *Collinsville Co.*, 123/831, 838, 51 S. E. 666.

Latter void, conferring on trustee a power of testamentary disposition. *Shewmake*, 148/287, 96 S. E. 564.

Rule as to. *Thompson*, 137/310, 73 S. E. 640.

Rule not applied, where intention ascertainable with reasonable certainty. *Burnett*, 110/350, 35 S. E. 655.

Rule as to, modified by code; manifest intention controls. *Huie*, 105/319, 31 S. E. 189.

Two clauses not treated as. *Baxter*, 106/349, 32 S. E. 94.

Reservation in deed, effect of. *Levis*, 119/476, 479, 46 S. E. 647.

Estops grantee from claiming prescription as to the thing reserved, where no notice of adverse holding. *Houser*, 108/469, 34 S. E. 126, 75 Am. St. R. 72.

Of "all the granite on said lot," construed; covered not merely granite exposed when the deed was made. *Collinsville Co.*, 123/831, 838, 51 S. E. 666.

In quitclaim deed was too indefinite and uncertain for decree of specific performance. *Savannah Ry.*, 145/811, 89 S. E. 1082.

Of interest in grantor insolvent, nugatory as against creditors. *Gibson*, 130/250, 60 S. E. 565.

Of mere easement, clause construed as. *Georgia &c. Ry.* 145/817, 90 S. E. 44.

Of timber, construed. *Lankford*, 127/666, 56 S. E. 774.

Of timber right, not made by recital construed in connection with aliunde evidence. *Sirmans*, 130/82, 60 S. E. 267.

When not inconsistent with dedication of land by. *County of Gordon*, 128/781, 58 S. E. 360.

Retention of an interest ineffective, where grantor conveyed all she owned. *Lewman*, 132/484, 64 S. E. 544.

Reversion, claim of, cannot change title actually conveyed by prior deed. *Brewer*, 141/528, 81 S. E. 442.

In homestead, deed to, when good. *Walker*, 113/1042, 39 S. E. 480.

Not provided for, in deed of trust for this church. *Huger*, 137/205, 73 S. E. 385.

On defeat of conditional grant, is to second (unconditional) grantee; not to grantor's heirs. *Irby*, 147/329, 93 S. E. 877.

Revocation clause on failure of consideration, when not enforced after grantor's death. *Hill*, 147/733, 95 S. E. 232.

Of deed by second conveyance to life-tenant, not effective to destroy remainder estate created by first deed made to defeat claims, etc. *Stubbs*, 143/56, 84 S. E. 126; *Hitchcock*, 143/377, 85 S. E. 119.

Right in gross, to fish in pond, was personal, not appendant to estate; not assignable or inheritable. *Mallet*, 127/761, 56 S. E. 1015.

Rights of parties fixed by deed, not by antenuptial contract, in this case. *Burney*, 134/141, 145, 67 S. E. 712.

Right of way, conveyance of, leaving its direction to be determined by grantee's agents, became operative when they located it. *Atlanta R. Co.*, 125/541, 54 S. E. 736.

Description sufficient to operate as color of title. *Bennett*, 126/411, 55 S. E. 177.

Given by writing, parol evidence of agreement not to injure water supply not heard. *L. & N. R. Co.*, 132/174, 63 S. E. 898.

Failure of deed to limit to a definite line. *Lee*, 115/65, 41 S. E. 246.

Lost by failure to build railroad to the land by time limited in conveyance. *Peterson*, 120/967, 48 S. E. 372.

Sale, contract of, indicated by recital of consideration of \$5. *Rich*, 147/488, 94 S. E. 566.

Second conveyance from same grantor to different grantee of same premises, when not admissible. *Carrie*, 145/184, 88 S. E. 949. Ineffective to limit es-

tate conveyed by former deed. *Stamey*, 145/226, 88 S. E. 935; *Cox*, 145/448, 89 S. E. 410.

Of fee by same grantor did not show his re-entry on forfeiture of title. *Chastain*, 147/622, 95 S. E. 216.

Statute of frauds not violated by showing that consideration of deed is performance of parol agreement. *L. & N. R. Co.*, 133/21, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Statute of uses, title by operation of. *Hadaway*, 119/264, 46 S. E. 96.

Stock in corporation, effect of instrument purporting to convey. *Commercial Bank*, 22 A. 688, 97 S. E. 107.

Substitution, words of, in granting clause, considered. *Fields*, 118/576, 45 S. E. 437.

Street boundary, question of existence of, at date of deed, for jury. *Hammond*, 116/792, 43 S. E. 53.

Surrender and destruction of deed, not alone sufficient to divest title. *Marchant*, 147/37, 92 S. E. 863.

Parol surrender by grantee of estate in timber, not revest title; no estoppel when not acted on. *Warren*, 129/329, 58 S. E. 858.

Tax deed, etc., as color of title. *Anderson*, 126/396, 55 S. E. 19.

Effect of; no title acquired by one who, after record, redemption, and expiration of redemption period, bought from the vendee, without notice of redemption, though the owner had not taken a reconveyance. *Bennett*, 123/618, 51 S. E. 654.

State not estopped by, when. *State*, 119/730, 46 S. E. 872.

Tax execution; sheriff's deed passed no title. *Ayer*, 146/608, 91 S. E. 548.

Deed in pursuance of sale under, when not admissible to show title. *Thompson*, 134/84, 67 S. E. 446.

Tenants in common, beneficiaries of trust would be, when trust executed, under deed construed. *Peavy*, 131/110, 62 S. E. 47.

Effect of conveyance, by one tenant, of part of common estate by metes

and bounds. *Lane*, 141/424, 81 S. E. 125.

Testamentary paper in form of deed did not convey title. *Barnes*, 107/436, 33 S. E. 399.

Unexecuted, effect of reference to, in conveyance of land. *Slay*, 145/775, 89 S. E. 830.

Timber on several lots conveyed, right to cut, how limited. *Baxter*, 106/344, 32 S. E. 94.

"Excepted from the sale," did not pass to grantee in conveyance of land. *Shaw*, 141/47, 80 S. E. 322.

Lease of, not ambiguous; intention as to warranty not shown by parol. *Carter*, 106/280, 31 S. E. 651.

Timber conveyance construed. *Roberts*, 134/271, 67 S. E. 802; *Mitchell*, 134/386, 67 S. E. 1042; *King*, 134/496, 68 S. E. 73; *Johnson*, 134/583, 68 S. E. 298; *Dickey*, 127/462, 56 S. E. 481; *Levis*, 119/476, 46 S. E. 647; *Allison*, 121/822, 49 S. E. 831; *Sutton*, 3 A. 377, 60 S. E. 2; *Mills*, 3 A. 557, 60 S. E. 299.

Without limitation as to use, rights of grantee in, to produce turpentine. Restriction as to size of trees. *Shaw*, 138/48, 74 S. E. 792. See *Jones*, 138/757, 76 S. E. 55.

Construed as conveyance of all timber on designated lots of land, warranty being as to number of acres—not necessarily lands covered with timber. *Perkins Co.*, 132/166, 63 S. E. 831.

Construed; estate determinable. *Jones*, 141/60, 80 S. E. 7.

Construed; timber rights and privileges; effect of indorsed transfer. *Gaskins*, 141/552, 553, 81 S. E. 882.

Included trees suitable for lumber at time of grant; not sprouts and saplings. *Vandiver*, 146/113, 90 S. E. 960. Timber suitable for sawmill purposes includes cypress; suitable for turpentine and sawmill purposes does not. *Gray Co.*, 122/342, 50 S. E. 164.

Construed; time for cutting and removal; reference to existing contract; rights under such deed; admissibility

of evidence. *Shippen Lumber Co.*, 136/37, 70 S. E. 672.

Rights not forfeited or terminated by not beginning work on day fixed in. *Florida Pine Co.*, 140/323, 78 S. E. 901.

Construed strongly against grantor. *Johnson*, 122/327, 50 S. E. 135; *Brinson*, 122/487, 50 S. E. 369. Oldest recorded, when prevails. *Id.* 487.

Construction of, as to warranty of title. *Turner Lumber Co.*, 20 A. 682, 93 S. E. 301.

As muniment of title, not subject to attack, unless by proceeding to reform. *Stewart*, 145/590, 89 S. E. 686.

Distinguished from lease or license to cut. *Lott*, 146/363, 91 S. E. 112. Timber standing, conveyance of, a deed and not a lease. *McLendon*, 2 A. 424, 426, 58 S. E. 690. Timber and logs suitable for cross-ties, conveyance of, to expire after a year, passes, not absolute title, but license to use the timber. *Johnson*, 122/327, 50 S. E. 135.

Title to timber remained in grantor under exception of "any timber rights." *Willbanks*, 146/750, 92 S. E. 281.

Extent of; grantee not restricted to use for sawmill purposes. *Byrd*, 146/546, 91 S. E. 682.

Growing timber, conveyance of, transfers interest in realty. No transfer of such interest by mere transfer of instrument of conveyance. *Dillard*, 143/494, 85 S. E. 701. When timber not conveyed by deed to land. *Boyd*, 23 A. 358, 98 S. E. 237.

Title, conveyance or color of, not shown by instrument not identifying land. *Calaway*, 147/17, 92 S. E. 538.

Contest between conveyance to innocent purchaser and prior voluntary deed. *Isler*, 134/192, 67 S. E. 854.

Conveyance of, not of fractional interest, to specified parcel under this deed. *Pulliam*, 144/696, 87 S. E. 1032.

Conveyed by deed as against claim of widow under unexecuted contract to convey to her in consideration of marriage. *Hammond*, 135/770, 70 S. E. 588.

Not acquired by remaindermen under deed executed by one having no title. *Spurlin*, 146/420, 91 S. E. 479.

Passed by deed, to revert to grantor only on happening of stated condition. *Lemon*, 141/448, 81 S. E. 118.

To locus in quo not shown by deeds here. *Brewer*, 141/528, 81 S. E. 442. Tract, conveyance construed as sale of; number of acres qualified by "more or less." *Blackmon*, 136/165, 71 S. E. 139.

Land sold by, not by acre here; effect of deficiency. *Goette*, 128/179, 57 S. E. 308.

Transfer of deed when not sufficient of itself to convey legal title. But when admissible in evidence. *Tillman*, 134/660, 68 S. E. 504.

Written on deed, when admissible, in connection with deed to show color of title. *Farkas*, 119/515, 46 S. E. 670.

Trees, estate of grantee under conveyance of; not terminated on failure to cut and remove in a reasonable time, where the right to do so "at any time" was expressly granted. *N. Ga. Co.*, 128/563, 57 S. E. 873.

Trust, conveyance in, conferred power to sell life-estate of wife and remainder of child. *Vernoy*, 133/654, 66 S. E. 928.

Deed of, construed. *Harris*, 124/311, 52 S. E. 610, 2 L. R. A. (N. S.) 828. Signed by one as president and another as secretary, conveyed no title of unincorporated trustees. *Ib.*

Beneficiary conveyed title by her deed without intervention of trustee, before 1866. *New South B. & L. Asso.*, 101/678, 29 S. E. 15.

Conveyance in, considered as a whole, and effect given to grantor's intent. *Taylor*, 147/761, 95 S. E. 289.

Created by deed, defeated by sheriff's sale, under execution of prior date, to purchaser without notice. *Keaton*, 136/188, 70 S. E. 1110.

Created by deed, for married woman, executed by act of 1866. *McCraw*, 134/579, 68 S. E. 324.

Created by deed, for married woman for life, remainder to children, executed by act of 1866, and did not extend to remainder. *Tillman*, 116/250, 42 S. E. 517.

Created by deed, limited to life-estate. *Powell*, 143/728, 85 S. E. 891.

Created by deed, not executed during minority of grantees. *Parker*, 140/789, 80 S. E. 12.

Created by voluntary association of persons, by deed to individuals here. *Howell*, 143/38, 84 S. E. 117.

Created by conveyance in question. *Fleck*, 144/732, 87 S. E. 1055.

Created by deed, not by will, held by grantee who was executor and trustee; and same was dealt with in order for sale and reinvestment. *Peavy*, 131/104, 62 S. E. 47.

Express, not engrafted on deed by parol evidence; aliter as to implied trust in favor of partnership. *Roach*, 143/488, 85 S. E. 703.

For church, deed creating, construed. *Huger*, 137/205, 73 S. E. 385.

For religious uses; clause considered. *Thompson*, 133/541, 66 S. E. 270.

Implied, where grantee took deed in his own name contrary to instruction. Effect of acquiescence or non-action. *Jones*, 103/183, 29 S. E. 298.

In 1869, for man of profligate habits and weak mind, passed title to him and his heirs. *Terrell*, 108/655, 34 S. E. 345.

Not created by this deed. *Walker*, 139/547, 77 S. E. 795.

Not impressed on property conveyed to beneficiary to reimburse for trust fund dissipated. *Lively*, 142/201, 203, 82 S. E. 545.

Power of sale legally exercised. Beneficiary's consent, how manifested. *Lee*, 124/495, 52 S. E. 806.

Power of sale survived to succeeding trustee. *Wadley*, 138/226, 75 S. E. 325. Trustee's power of sale under, did not authorize conveyance of gift with nominal consideration. *Taylor*, 147/761, 95 S. E. 289. Trustee's deed in payment of individual debt, not good,

though the instrument creating the trust gave general power of sale. **Cohen**, 105/339, 31 S. E. 205.

Conveyance to one as trustee was to him individually, before first code; afterward held to create trust. **Peavy**, 131/109, 62 S. E. 47.

Power to mortgage, in trustee, and to use rents, and profits without accountability, construed. **Plant**, 122/763, 50 S. E. 961.

"Turn over" land, meaning of, in instrument here. **Horton**, 117/76, 43 S. E. 786.

Unambiguous, not explainable by parol. **Terrell**, 108/655, 34 S. E. 345.

Uncertainty, deed not held void for, if by reasonable construction it can be upheld. **Moody**, 131/521, 526, 62 S. E. 821.

Instrument void for. **Carr**, 141/219, 80 S. E. 716.

Void, attempt to convey immediate estate to one not in esse. **Davis**, 113/211, 38 S. E. 827, 84 Am. St. R. 233.

Estoppel of grantee to assert that deed was. **Moran**, 129/601, 59 S. E. 281.

Voluntary conveyance by insolvent grantor, or (if not insolvent) to hinder creditors, void. **Beasley**, 144/379, 87 S. E. 293.

By debtor, when good, as against creditors. **Cohen**, 105/347, 31 S. E. 205.

By one who afterwards conveyed the property to a purchaser with notice, did not prevail against conveyance by the latter to a purchaser without notice. **West**, 121/470, 49 S. E. 285.

Deed shown to be, though reciting valuable consideration. **Finch**, 113/997, 39 S. E. 418.

Evidence not sufficient to show. **Pierce**, 120/536, 48 S. E. 128.

Evidence warranting finding that deed made to wife at instance of husband was. **Longmore**, 121/411, 49 S. E. 264.

Not prior to contract lien acquired by innocent holder without actual notice. **Avera**, 147/24, 92 S. E. 533.

Not rendered void by facts here. **Wellmaker**, 113/1155, 39 S. E. 475.

On face, deed is not, that recites consideration of five dollars and love and affection. **Pierce**, 120/536, 48 S. E. 128; **Martin**, 115/866, 42 S. E. 279.

To minor by father, who retained possession of the property, good as against creditors here who claimed to have extended credit to the father on the faith of his apparent ownership. **Ross**, 113/1047, 39 S. E. 471.

Void as to creditors if maker insolvent, or if made to hinder creditors, though intention unknown to donee. **Ernest**, 107/61, 32 S. E. 898.

What is, how determined. **Martin**, 115/866, 42 S. E. 279; **Shackelford**, 135/30, 68 S. E. 838.

Where father buying land with his money had deed made to him as daughter's trustee in payment of what he erroneously thought he owed her; validity of. **Cohen**, 105/347, 31 S. E. 205.

Whether merely nominal consideration will save deed from being classed as. **Finch**, 113/997, 39 S. E. 418.

Warrantors joint, when signers of deed are, though only one is actual vendor. **Ashburn**, 8 A. 566, 70 S. E. 19.

Liability of, where vouched into court by plaintiff in ejectment; form of notice, sufficient. **Ashburn**, 8 A. 566, 70 S. E. 19.

Warranty (general) of title, effect of; especially as to interest afterward acquired by warrantor. **Oliver**, 141/126, 80 S. E. 630.

Against encumbrance; action defended by showing real agreement in parol. **Thrower**, 144/372, 87 S. E. 301.

Breach of. **Turner Lumber Co.**, 20 A. 682, 93 S. E. 301.

Breach of, by eviction, when no recovery for. **Stiger**, 109/457, 34 S. E. 595.

Breach of; petition for damages must set out enough of deed to show covenant of warranty. **Gano**, 116/22, 42 S. E. 371.

Warranty—(Continued).

By executor, when not bind individually, under common-law rule. *Aven v. Beckom*, 11 Ga. 1, distinguished. *Baxter*, 126/354, 54 S. E. 1036.

Covenant of general warranty of title to realty, construed in connection with other parts of the deed and with a contemporaneous written agreement of the parties. Rule that such a covenant is limited to the grantor's right or interest, where the deed purports to convey only his right, title, and interest, was not applicable. *Turner Lumber Co.*, 20 A. 682, 93 S. E. 301.

Covenant of, if not restricted, passes to second or remote grantee. *Croom*, 145/374, 89 S. E. 199.

Damages not recovered as for breach of, on conveyance of land less than that in boundaries orally pointed out. *Morgan*, 146/352, 91 S. E. 117.

General, covers deficiency of acres known by vendee to have been cut off of the lot conveyed. *Godwin*, 106/194, 32 S. E. 114.

Complete, covers known defects of title. *McCall*, 121/722, 49 S. E. 722; *Allen*, 121/841, 49 S. E. 799.

Joint action for breach of, under separate deeds. *Adams*, 21 A. 681, 94 S. E. 914.

In conveyance of bare contingency or possibility, not available to subject after-acquired property. *Dailey*, 144/395, 87 S. E. 479.

Liability of grantor on, who has conveyed same land to different grantees. *Thompson*, 137/308, 73 S. E. 640.

No recovery for breach of, as to land not embraced in description, though pointed out as within boundaries at time of sale. *Littleton*, 130/692, 61 S. E. 593.

Of perfect and unincumbered title, breach of, shown by uncontradicted evidence of paramount outstanding title. *Perkins Co.*, 132/166, 63 S. E. 831; *Joyner*, 132/779, 65 S. E. 68.

Of title, no breach of, under facts.

Cureton, 120/560, 48 S. E. 162.

Water and mill privileges, rights under grants of. *Rome Railway & Light Co.*,

141/202, 80 S. E. 585, Ann. Cas. 1915C, 1023. Water privileges to water mark, and privileges in going to mill, excepted in conveyance, no right to fish passed. *Lee*, 116/18, 42 S. E. 372.

Way located by grantor, and given as one boundary, he can not close it without grantee's consent. *Gibson*, 143/104, 84 S. E. 373.

Wife could not, as grantee of husband, attack his former instrument as a void deed, which had been foreclosed as a mortgage. *Burks*, 108/783, 33 S. E. 711.

Conveyance by, to enable husband to settle debts secured by prior liens, when valid. *Zorn*, 108/78, 34 S. E. 303.

Deed of, prior to "married woman's act," did not prevail against husband's, made since that act. *Hudgins*, 103/484, 30 S. E. 301.

Deed of, to secure loan to husband, void. *Gross*, 128/79, 57 S. E. 94.

Deed of, to secure husband's debt, not declared void as to purchaser bona fide and without notice. *Mercer*, 136/632, 71 S. E. 1075.

Separate estate, whether manifested by taking husband's deed on money consideration, not decided. *Scaife*, 134/1, 67 S. E. 408.

Deed of, to husband, construed, in connection with petition that she be allowed to execute the same. *McCreary*, 103/528, 29 S. E. 960.

Deed of, to husband without order of court; when valid, and when not. *American Ins. Co.*, 6 A. 736, 65 S. E. 787.

Conveyance by wife to husband. *Shackelford*, 135/30, 68 S. E. 838.

Will or deed; paper held to be deed. *Sharpe*, 123/794, 51 S. E. 706; *Kyle*, 128/387, 57 S. E. 748.

Test to determine. *Barnes*, 107/439, 33 S. E. 399; *West*, 115/277, 41 S. E. 602.

Words "heirs," "I have given," "this is to certify," considered. *Brice*, 118/130, 44 S. E. 843.

Year's support, conveyance of, by widow, where land set apart to her and minor children. *Frazier, 145/646, 89 S. E. 743.*

Conveyance of land set apart as, in consideration of personal service. *Tate, 144/698, 87 S. E. 1023.*

3. ESTATES CREATED BY DEEDS.

Antenuptial agreement conveyed equitable estate for life and remainder in fee, in trust. *Cunningham, 135/715, 70 S. E. 574.*

Children: estate immediate, with present enjoyment, to woman and her children as tenants in common, not including children born afterward. *Powell, 141/793, 82 S. E. 232.*

"Trustee for his legal heirs," conveyance to, refers to children in esse when deed executed. *Miller, 145/858, 90 S. E. 65.*

Nature of estate, where deed was to maker's daughter and her children, should any be born, and if none living at her death, then to him or his heirs. *Davis, 113/210, 38 S. E. 827, 84 Am. St. R. 233.*

Estate (in trust) for mother and children for life, legal remainder to children, by deed here construed. *Richards, 106/615, 33 S. E. 193, 45 L. R. A. 712.*

Easement, "fee simple," descriptive of extent of duration of enjoyment of. *Georgia &c. Ry., 145/817, 90 S. E. 44.*

Fee defeasible on death of grantee childless; and how vested. *Barton, 147/522, 94 S. E. 1007.*

By conveyance to daughter, her heirs and assigns. Reference to her children conveyed to them nothing. *Pace, 148/507, 97 S. E. 70.*

On condition subsequent, in consideration of caring for grantor, conveyed. *Jones, 132/782, 64 S. E. 1081.*

Not diminished by later deed of same grantor, with entry endorsed by

grantee. *Cox, 145/448, 89 S. E. 410; Stamey, 145/226, 88 S. E. 935.*

Taken by grantee of devisee whose estate was subject to be divested on her death without children. *Taylor, 144/437, 87 S. E. 469.*

Taken by surviving child of grantee, who was life-tenant and trustee. *Heyward-Williams Co., 140/502, 79 S. E. 133.*

In common to wife and grantor's children in life at date of deed. *Butt, 148/672, 97 S. E. 854.*

Conveyed by deed that would have created estate tail. *Stamey, 145/226, 88 S. E. 935.*

Conveyed, subject to be divested as to any grantee dying before time for division. *Walker, 139/547, 77 S. E. 795.*

Qualified, subject to be divested on death without child in life. *Davis, 113/210, 38 S. E. 827, 84 Am. St. R. 233.*

Conveyance in, left no title in grantor. His second deed (not to correct mistake) conveyed no interest. *King, 144/318, 87 S. E. 22.*

Attempt to restrict sale of, by grantee, was ineffectual. *Stamey, 145/226, 88 S. E. 935.* **Attempt of grantor to limit estate, by second conveyance, not effective.** *Ib.; Cox, 145/448, 89 S. E. 410.*

Full beneficial interest; "her heirs and issue by," etc., being words of limitation, not of purchase. *McCraw, 134/579, 68 S. E. 324.*

Heirs: conveyance to A exclusively, by deed to A and her heirs. *Douglas, 130/472, 60 S. E. 1041.*

Estate conveyed by deed to A "and the heirs of her body born and to be born" was not an estate in common, but was fee simple to A. *Smith, 111/797, 36 S. E. 906.*

"Heirs of her body," as designation of children. *Smith, 130/532, 61 S. E. 114, 124 Am. St. R. 177.*

Fee simple, by conveyance to A and the heirs of her body. *Lane, 147/100, 92 S. E. 887; Griffin, 101/720, 29 S. E. 29.*

Life-estate only acquired by grantee in conveyance of fee by tenant for life. No prescription thereunder. *Stubbs*, 143/58, 84 S. E. 126; *Hitchcock*, 143/377, 85 S. E. 119.

With power to dispose by will, merged with inheritance of contingent reversion; complete title passed by deed here. *Wilder*, 102/44, 29 S. E. 134.

With remainder not created. *Walker*, 138/547, 77 S. E. 795.

Conveyance by life-tenant, void except as to life-estate. *Ellis*, 110/613, 36 S. E. 97.

With remainder to heirs of body, was conveyed by deed to B "and the heirs of her body after her death," with habendum to B, "her heirs and assigns in fee simple." *Burch*, 14 A. 153, 80 S. E. 664. Estate to woman, "and the heirs of her body after her death," was for her life, with remainder to children. *King*, 144/318, 87 S. E. 22; *Parkins*, 147/122, 92 S. E. 875.

By deed attempting to execute power of sale and convey fee. *Satterfield*, 132/256, 64 S. E. 60.

Construction of deed creating estates for life and in remainder. *Smith*, 144/115, 86 S. E. 235.

With vested remainder. *Burney*, 134/141, 67 S. E. 712.

In trust, "reversion" to life-tenant or her heirs at law, with power of sale, construed. *County of Bibb*, 147/493, 94 S. E. 765.

Equitable with legal remainder under trust deed. *Ballenger*, 147/5, 6, 92 S. E. 514.

With remainder. Defeat of remainder for want of person to take it. *Edwards*, 147/12, 92 S. E. 540.

Granting clause conveying "the life-interest, and estate," of grantor owning life-estate and a fractional interest in fee, construed with subsequent clauses, did not pass more than life-estate. *McDonald*, 107/44, 32 S. E. 879.

For life of son, with remainder to his children, by this deed. *Burnett*, 110/349, 35 S. E. 655.

For life of grantor reserved ("exclusive control") by deed on valuable consideration. *North Ga. Co.*, 138/775, 76 S. E. 95.

For life of grantee conveyed, with power in him to sell and convey in fee the entire estate. *Nort*, 136/287, 71 S. E. 471.

With vested remainder, subject to open for after-born children, under this deed. *Milner*, 145/858, 90 S. E. 65; *Overby*, 145/875, 90 S. E. 67.

With remainder on death to each child of grantor, conveyed by this instrument. *Megahee*, 146/498, 91 S. E. 677.

Subject to levy and sale, created by deed here shown. *Franklin*, 144/208, 86 S. E. 536.

For life of grantee, with remainder that was a base or defeasible fee. *Sterling*, 139/21, 76 S. E. 375.

For life of grantee, with vested remainder in fee to her sons. *Bush*, 141/62, 80 S. E. 286.

Marriage settlement executed in 1856, estates created by, for life and in remainder; title vested in trustee. *Jones*, 138/757, 76 S. E. 55.

Perpetuity attempted; vesting of estate, after giving effect to limitations not too remote. *Shewmake*, 148/287, 96 S. E. 564.

Estate void under rule against; limitations too remote. *Overby*, 145/875, 90 S. E. 67.

Possession for life, estate vested in grantee, where grantor reserved right of. Devise not effective. *Puett*, 144/193, 86 S. E. 547.

Remainder was vested. *Anderson*, 147/138, 93 S. E. 93.

Contingent, limited to children of life-tenant who survived her, by deed designating "such child or children . . . that she . . . may leave in life." *Smith*, 130/532, 61 S. E. 114, 124 Am. St. R. 177.

Contingent becoming vested, benefit enures to grantee in prior conveyance. *Isler*, 134/192, 67 S. E. 854.

Contingent on person, when no basis of recovery. *Town of Decatur*, 144/728, 87 S. E. 1036.

Contingent, becoming vested by event. *Isler*, 134/192, 67 S. E. 854.

Contingent, defeated by sale for support of grantee, under terms here. *Huff*, 138/613, 75 S. E. 662.

Contingent, vested on birth of lawful issue of life-tenant, subject to be divested on her death without lawful issue surviving her, created by deed here. *Kollock*, 113/762, 763, 39 S. E. 339.

Defeasible, conveyance of. *Sumpster*, 115/894, 900, 42 S. E. 324, 60 L. R. A. 274.

Estates in, created by; and whether vested or contingent. *Fields*, 118/573, 45 S. E. 437.

Legal estate, not equitable here. *Overstreet*, 113/891, 39 S. E. 431.

Termination of estate; burden of proof under special facts. *Shippen Lumber Co.*, 136/37, 70 S. E. 672.

Tenancy in common for life of mother; remainder to children as to her interest. *Hammock*, 147/828, 95 S. E. 679.

Trust created by deed, was for life-estate only; remainder was legal, not represented by trustee. *Seaboard Air-Line Ry.*, 142/317, 82 S. E. 890. See *Howard*, 142/1, 82 S. E. 292.

Estate created by deed of. *Howell*, 137/710, 74 S. E. 255.

Deed in 1876 conveyed life-estate to wife, remainder to children as a class, including after-born child. Provision for home construed. Remainderman had no right of action until death of life-tenant. *Stiles*, 122/635, 50 S. E. 484.

For life and in remainder, deed creating, passed full title to trustee. *Woodbery*, 148/712, 98 S. E. 472.

For minors created by deed to one as trustee for the heirs of his body, he having three minor children. *Turner*, 131/444, 62 S. E. 587.

For married woman and her children, by deed in 1853, conveyed fee to husband. II—29.

band who accepted trust and waived his marital rights. Effect of sale as to remainder interest. *Johnson*, 122/524, 50 S. E. 367.

For wife and children of grantee, conveyance in, conveyed no life-estate to him. *Shepherd*, 147/365, 94 S. E. 237.

In deed to woman and children, when expired on arrival of children at majority. *Parrott*, 105/93, 31 S. E. 417.

Executory, created by deed conveying life-estates with contingent remainder; trust not executed by married woman's act of 1866. *Riggins*, 105/727, 31 S. E. 743.

Under deed of 1891, only such children as then lived took; after-born children excluded. *Plant*, 122/763, 50 S. E. 961.

Trustee took legal title to both life-estate and remainder, under conveyance here construed. *Gunby*, 146/536, 91 S. E. 556.

Trustee took life-estate only, not remainder. *Richards*, 106/614, 33 S. E. 193, 45 L. R. A. 712; *Allen*, 106/775, 32 S. E. 927.

Trustee's conveyance to beneficiary, limiting her estate, effect of accepting. *Quinn*, 148/112, 95 S. E. 968.

See 2, *supra*, catchword Trust.

4. EVIDENCE.

Acquiescence in arbitration and award, deeds were admissible as evidence to show. *Murrelle*, 142/41, 82 S. E. 456.

Acquired by plaintiff pending suit, deed admissible as evidence of title, when. *City of Atlanta*, 137/495, 496, 73 S. E. 736.

Administrator's deed admissible in evidence, over objection of adverse possession. *Smith*, 133/790, 66 S. E. 1086. *Weeks*, 133/479, 66 S. E. 168, 134 Am. St. R. 213.

Admissible over objections offered. *Davis*, 143/99, 84 S. E. 426.

To land in one county, with caption as of another, with no recital of order or public sale, and unaided by evidence, inadmissible as muniment of title. *Sapp*, 131/433, 62 S. E. 529.

Not evidence of title, without proof of order to sell. Recital not sufficient. *Brown*, 141/420, 81 S. E. 196; *Hilton and Dodge Lumber Co.*, 141/654, 81 S. E. 1119.

To wild land, not objectionable as evidence on ground presented. *Heard*, 136/731, 71 S. E. 1118.

Under order of court of ordinary for sale of realty, admissible over objections here taken. *Oliver*, 114/593, 40 S. E. 826.

With order for sale, admissible as muniment of title, without letters of administration. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916 C. 173.

Without order for sale, admissible as color of title. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916 C. 173.

Admissibility of deed as muniment of title. *Scaife*, 134/1, 67 S. E. 408. Where not entitled to record, and without proof of execution. *McConnell*, 134/85, 67 S. E. 440.

On proof of execution and of ratification, though other evidence tends to prove it impossible for maker to have executed it on its date. *Sanford*, 114/1005, 41 S. E. 668.

Of deeds over objection, under special facts. *Miller*, 145/617, 89 S. E. 689. Not admissible. *Flint River Lumber Co.*, 134/627, 68 S. E. 436.

Though requiring aid of adminicular proof. *Hilliard*, 147/15, 92 S. E. 634; *Avera*, 147/24, 92 S. E. 533.

Of registered deed; and of deed by attorneys in fact, as color of title. *Gilmer*, 146/721, 92 S. E. 67.

Of recorded deed. *Hansen*, 132/654, 662, 64 S. E. 800.

Admission of ownership made it unnecessary to introduce deed as evidence; exclusion not error. *Allen*, 125/337, 54 S. E. 176.

As to title, objection to deed immaterial, in view of. *Town of Wrens*, 129/755, 59 S. E. 776.

Alteration; change of county in caption, when not effective to exclude deed from evidence. *McConnell*, 134/95, 67 S. E. 440.

Registered deed containing, admissible without explanation or proof, if no affidavit of forgery. *Gilmer*, 146/721, 92 S. E. 67.

Unimportant and immaterial, not sufficient to exclude from evidence. *Brice*, 118/128, 44 S. E. 843.

Ancient document, admissibility as. *McConnell*, 134/95, 67 S. E. 440; *Daugharty*, 134/651, 68 S. E. 472.

Admissibility of, without proof of execution. *Smith*, 10 A. 283, 73 S. E. 428; *Follendore*, 110/359, 35 S. E. 676.

What admissible as, without proof of execution; and how attacked. *McArthur*, 107/796, 34 S. E. 205; *Levérett*, 6 A. 91, 64 S. E. 317.

Transfer on deed, conveying back to vendor, when not admitted as. *Williamson*, 110/53, 35 S. E. 301.

Not connected with title of party offering, not admissible in evidence. *Callaway*, 140/207, 78 S. E. 846.

Deed not shown to be, by its date alone. Attestation unofficial; necessity of proof. *Rowe*, 143/756, 85 S. E. 917.

Rule dispensing with proof of execution applies only to original papers, not to copy of recorded deed. *Bentley*, 119/530, 46 S. E. 645.

Attack of deed for insufficiency, not prevented by omission to object to reception in evidence. *Brookman*, 148/726, 98 S. E. 543.

Attestation of official witness lacking, no ground for excluding unrecorded land deed from evidence on trial for perjury. *Mallard*, 19 A. 99, 90 S. E. 1044.

Best evidence of its contents, deed is; should be accounted for before certified copy admitted. *McMillan*, 133/761, 66 S. E. 943.

Boundary line of land in controversy; admissibility of deed from owner of abutting land. *Roberts*, 146/490, 91 S. E. 675.

Chain of title, deed admissible as link in. *Hamilton*, 127/762, 56 S. E. 1022.

Deed not objectionable as not being a link in. *Guest*, 145/593, 89 S. E. 687.

Claim case, admissibility of deed on trial of. *Stewart*, 135/112, 68 S. E. 1037.

Color of title, admissibility of deed as, and for other reasons. *Turner*, 141/27, 80 S. E. 461. See *Deeds*, 2, catchwords *Color of title*.

Complaint for land, deed not received in evidence on trial of, unless recited in abstract of title or amendment *Lee*, 120/529, 48 S. E. 129.

Copy as evidence, foundation for introduction of. *Shirley*, 105/504, 31 S. E. 105.

Admissibility of, as evidence. *Acme Brewing Co.*, 115/494, 42 S. E. 8; *Griffin*, 115/613, 41 S. E. 1003.

Admissibility of testimony as to. *Harkless*, 115/351, 41 S. E. 634.

What necessary to render admissible. *Garbutt Lumber Co.*, 111/821, 35 S. E. 686.

Certified, of registered deed, showing insufficient to admit in evidence. *Smith*, 110/650, 36 S. E. 105.

Certified, from record, admitted to prove existence, genuineness, and contents of original, if shown lost. *Holtzclaw*, 114/171, 39 S. E. 849.

Established and recorded, admissible without proof of execution *Leggett*, 114/714, 40 S. E. 736. But unless deed lawfully admitted to record, copy is not evidence; and proof of execution must be made. *Crummey*, 114/746, 40 S. E. 765.

Certified, of proceedings establishing copy of lost deed, admissible where original deed would be. *Leggett*, 114/714, 40 S. E. 736.

Certified, when admissible. *Denny*, 118/221, 44 S. E. 982.

From registry, admissibility of. *Cox*, 112/414, 45 S. E. 401.

From record, of deed attacked as forgery, error in admitting in evidence here. *Bentley*, 119/530, 46 S. E. 645.

From registry not admissible, where but one witness. *Bower*, 126/35, 54 S. E. 918.

Certified from records of one county, when no proof of execution as to land in other county, where not recorded. *Dyson*, 130/573, 61 S. E. 468.

Not admissible on certificate of unofficial person. *Dyson*, 130/573, 61 S. E. 468.

Certified, of record, admissible where deed lost. *Cannon*, 136/167, 71 S. E. 142, Ann. Cas. 1912 C, 39. Not so where deed not legally admitted to record. *Flint River Lumber Co.*, 134/627, 68 S. E. 436.

Of worn and faded records. *Henry*, 137/153, 72 S. E. 1021.

Certified, from registry, admissible. Error in admitting original record, how cured. *Peoples*, 140/610, 79 S. E. 466.

Of administrator's deed (certified), when admissible as secondary evidence. *Brown*, 141/420, 81 S. E. 196.

Certified, from record, not admissible as evidence, where deed not so attested or probated as to be admissible to record. *Turner*, 141/27, 80 S. E. 461; *Landrum*, 145/307, 89 S. E. 201.

Compared with original, when admissible as evidence on proof of loss or destruction. *Landrum*, 145/307, 89 S. E. 201.

Certified, of recorded deed, not admissible without proof of inquiry for original. *Alaculsey Lumber Co.*, 146/310, 91 S. E. 104.

Preliminary evidence offered to show inaccessibility of original should be set out in ground of motion for new trial, as to refusal to admit copy. *Foreman*, 8 A. 822, 70 S. E. 158.

Corporation, deed of, executed by secretary and treasurer, without seal attached, not admissible in evidence. *Jenkins*, 144/44, 85 S. E. 1042.

See 5, *infra*, catchword *Corporation*.

Dates of execution and registry, evidence as to, admissible in connection with, it being objected that these are false on its face. *Carr*, 108/757, 33 S. E. 190.

- Dedication**, deed admissible as showing declaration of intent to make. *Ellis*, 138/182, 185, 75 S. E. 99; see *Hurt*, 138/380, 75 S. E. 418.
- Discretion of court** as to showing required before admitting copies from registry. *Cox*, 118/414, 45 S. E. 401.
- Equitable title**, admissibility of deed as tending, with other evidence, to prove elements of. *Wall*, 143/417, 85 S. E. 325.
- Executor's deed** not admissible as evidence of title, without proving his appointment as executor. *Bryan*, 143/70, 84 S. E. 120.
- Husband**, admissibility of deeds from, on issue of title between wife and later grantee. *Oats*, 136/704, 71 S. E. 1097.
- Lost or destroyed deed**; requirements for admission of copies from record. *Cox*, 118/414, 45 S. E. 401.
- Admissibility of compared copy of original not legally recorded. *Landrum*, 145/307, 89 S. E. 201.
- Certified copy from registry, admissible in lieu of; not the original record. *Peoples*, 140/610, 79 S. E. 466.
- Preliminary showing as to, when sufficient to let in copies. *Bower*, 126/35, 54 S. E. 918.
- Original conveyance, loss of, recited; deed not admissible without showing prior existence of such original. *Carrie*, 145/184, 88 S. E. 949.
- Muniment of title**, deed relevant as. *Livingston*, 132/1, 63 S. E. 694.
- Objection to deed** as "inadmissible," too indefinite. *Washington Exchange Bank*, 23 A. 356, 98 S. E. 418.
- Order to submit affidavits** before hearing, not applied to deed. *Town of Adel*, 122/535, 40 S. E. 481.
- When deed not excluded from evidence because order confirming it has been detached. *Brinkley*, 131/226, 62 S. E. 67. Or because order or will not produced as power to make it. *Dodge*, 131/549, 62 S. E. 987.
- Parcels of land** different from that in dispute, deeds conveying, when relevant as evidence. *Lee*, 124/495, 52 S. E. 806.
- Parent**, evidence of deed by, to child, pending suit for damages by child against third person, admissible. *Tow-aliga Falls Co.*, 136/397, 71 S. E. 781.
- Plat and grant** without seal, admissible in connection with certified copy and parol proof of loss of seal, though differing as to acreage. *Reppard*, 103/198, 29 S. E. 817.
- Power of attorney**, duly executed, must accompany deed offered as a muniment of title. *Gilmer*, 146/721, 92 S. E. 67.
- Prescriber's good faith**, admissibility of deed to show, when not admissible as muniment to title. *Garbutt Co.*, 137/592, 73 S. E. 841.
- Proof of execution**; deed properly attested and recorded does not require further proof. *Munroe*, 145/215, 88 S. E. 947; *Charles*, 4 A. 740, 62 S. E. 493.
- When not required of party offering deed as evidence. *Leverett*, 6 A. 91, 64 S. E. 317.
- Recorded deed of personal property is entitled to go in evidence without other proof. *Owens*, 13 A. 419, 79 S. E. 225.
- Recording entitles deed to admission in evidence without proof, if no affidavit of forgery filed, though recording be subsequent to commencement of suit. *Smith*, 10 A. 281, 73 S. E. 428.
- Where original lost and not properly attested. *Griffin*, 115/610, 41 S. E. 1003.
- Quitclaim**, admissible in evidence over objection. *Dennard*, 142/171, 82 S. E. 558.
- Duly attested and recorded, admissible as registered deed. *Gilmer*, 146/721, 92 S. E. 67.
- Secondary evidence** as to contents of deed, what necessary to render admissible. *Garbutt Lumber Co.*, 111/821, 35 S. E. 686.
- Foundation for, not sufficient. *Crummey*, 114/746, 40 S. E. 765.
- Not authorized without proof of delivery. *Smith*, 112/351, 37 S. E. 407.

To prove deed after foundation by evidence of execution and delivery of lost original. *Drew*, 146/479, 91 S. E. 541.

Received without objection (though objectionable), a sufficient basis for verdict. *Munroe*, 145/215, 88 S. E. 947.

Settlement of debt, admissibility of deed as evidence of. *Wardlaw*, 14 A. 594, 79 S. E. 523.

Statement that testimony will be introduced, deed admitted in evidence on, not afterward ruled out without motion. *Hix*, 124/548, 52 S. E. 890.

Suit, deed taken pending, in lieu of lost deed, when not admissible as evidence for plaintiff. *Lee*, 138/646, 75 S. E. 1051.

Title acquired after trespass, deed showing, not admissible in action for damages. *L. & N. R. Co.*, 134/107, 67 S. E. 652.

Deed as evidence of, must be supported by proof of grantor's title or possession. *Taylor*, 134/479, 68 S. E. 70. See *Ejectment*; *Title*.

Witnesses, deed not admitted without examining or accounting for. *Howard*, 104/230, 30 S. E. 802.

5. EXECUTION AND DELIVERY.

Acceptance and delivery both essential; presumption as to. *Bourquin*, 110/440, 35 S. E. 710; *Stallings*, 110/875, 36 S. E. 227. Both sufficiently appeared relatively to rights of vendee's creditor. *Goodwynne*, 116/901, 43 S. E. 275.

In part and rejection in part not allowed. *Burney*, 134/147, 67 S. E. 712.

By owner of full equitable title, of conveyance limiting estate, how effective. *Guinn*, 148/112, 95 S. E. 968.

Acknowledging instrument, referring to prior deed, need have no more than one witness. *Boyd Lumber Co.*, 146/794, 92 S. E. 534.

Acknowledgment in another State of deed to Georgia land, who may take. *Cunningham*, 109/613, 35 S. E. 53.

In another State, what sufficient. *Vizard*, 119/918, 47 S. E. 348.

Actual delivery, when not essential; constructive delivery in grantor's lifetime would suffice. *Baxter*, 147/438, 94 S. E. 544.

Where grantee did not receive deed until after death of grantor. *Puett*, 144/193, 86 S. E. 547.

Administrator de bonis non had power to execute, without an order, after obtaining judgment on note for price of land. *Goodwynne*, 116/901, 43 S. E. 275.

Agent (to whom delivered) of corporation predecessor to defendant, competent witness. *Rosser*, 102/164, 29 S. E. 171.

Delivery by, in violation of instructions. *Anderson*, 125/669, 54 S. E. 679.

Correct mode of execution by agent or attorney in fact. *Hansen*, 132/657, 64 S. E. 800.

Attestation and delivery tend to show instrument intended as deed rather than as will. *Brice*, 118/131, 44 S. E. 843.

As justice of the peace, by individual grantor who was grantee in capacity of trustee, ineffective. *Simmons*, 144/845, 88 S. E. 199.

By attorney of party, legal. *Fincher*, 12 A. 612, 613, 77 S. E. 1068; *Madden*, 137/555, 78 S. E. 825.

By attorney, good as to client's deed reconveying property for levy and sale. *Morgan*, 141/329, 80 S. E. 996.

By corporation, for admission to record, prima facie authorized. *Frazier*, 147/654, 95 S. E. 211; *Missouri Life Ins. Co.*, 147/677, 95 S. E. 244; *Boone*, 147/812, 95 S. E. 707.

By deputy clerk of superior court. *Ballard*, 105/191, 31 S. E. 554.

By judge of court of record in another State. *Cunningham*, 109/618, 34 S. E. 1024.

By notary beneficially interested in the transaction, invalid. *Southern Iron*

Attestation—(Continued).

&c. Co., 138/258, 75 S. E. 248, 41 L. R. A. (N. S.) 375.

By one who did not hear grantor acknowledge or see him sign, insufficient. **Baxley, 117/60, 43 S. E. 436.**

Place on which written on deed is immaterial when purpose to attest maker's signature appears beyond question. **Gress L. Co., 105/848, 32 S. E. 632.**

In another State by clerk of court, when sufficient. **Ford, 117/210, 43 S. E. 483.** By notary; what sufficient certificate as to authority before act of 1900. **Durrence, 117/385, 387, 43 S. E. 726.**

In another State by commissioner of deeds for Georgia, sufficient without certificate as to his identity and official character. **Dodge, 109/394, 34 S. E. 672.**

In New York by U. S. consul, not good. **McCandless, 101/180, 28 S. E. 663.**

Of deed not executed in the State, what sufficient. **Vizard, 119/918, 47 S. E. 348; McTyer, 142/850, 83 S. E. 955.**

"J. P." after name affixed to jurat, sufficient to designate official character as justice of the peace. **Abrams, 121/170, 48 S. E. 965.**

Judicial cognizance as to attesting officer. **Abrams, 121/170, 48 S. E. 965.**

Not by two witnesses, not affecting validity of deed, as to persons with actual notice; it affects right of record and mode of proving execution. **Cherry Lake Co., 10 A. 339, 73 S. E. 610.** See **Balchin, 10 A. 434, 73 S. E. 613.** Objection as to, not properly made. **Ib.**

Objection to, for want of official character of witness, removed by proof, by one of subscribing witnesses, of due execution and delivery. **Crawford, 122/814, 50 S. E. 958.**

Official character of witness not stated in conjunction with his name, but shown elsewhere. **Ford, 117/212, 43 S. E. 483.**

Attestation—(Continued).

Of lease of standing timber, governed by law as to deeds to land. **Cherry Lake Co., 10 A. 339, 73 S. E. 610.**

Wanting, inadmissible to record, but conveys title as against grantor and his privies. **Howard, 104/230, 30 S. E. 802.**

Place of, not stated, presumed to have been made at place where the attesting officer was authorized to make it, when. **Abrams, 121/170, 48 S. E. 965.** Attestation and execution within jurisdiction of officers, prima facie shown. **Glover, 137/684, 73 S. E. 1068, Ann. Cas. 1913B, 191.**

Presumed as at place named in caption; when shown otherwise by officer's signature. **Bryant, 145/531, 89 S. E. 512.**

Presumption from, as to knowledge of contents; estoppel by. **American Freehold Co., 119/341, 46 S. E. 426.**

When not constitute material alteration. **Heard, 121/437, 49 S. E. 292.**

Whether sufficient. **Brockett, 18 A. 670, 90 S. E. 366.** Presumption as to place. **Ib. 672, 673.**

By justice of inferior court of county different from that stated in caption, when not entitled to record or reception as evidence. **Flint R. L. Co., 134/627, 68 S. E. 436.**

By notary disqualified by interest as partner or stockholder, record not effective as notice, and paper inadmissible. **Betts-Evans Co., 2 A. 718, 59 S. E. 8.**

By notary public in county of his appointment, admissible to record in other county where land lies. By notary who is agent and attorney for lender of money secured by the deed and who represented him in the negotiation for loan, legal. **Austin, 122/440, 50 S. E. 382.**

By one witness. **Hayes, 105/300, 31 S. E. 166; Toole, 107/475, 33 S. E. 686.**

By one witness, error in admitting deed in evidence, harmless, in view of undisputed evidence as to 30 years

possession of land. **Foreman**, 8 A. 823, 70 S. E. 158.

Grantee may not be witness. Identity of names may not show identify of person. **Gray Co.**, 127/695, 56 S. E. 252.

By ordinary, good. **Sasser**, 108/229, 33 S. E. 881.

By two unofficial persons, deed recorded on usual affidavit as to execution and delivery, admissible evidence. **Parker**, 101/164, 28 S. E. 681, 65 Am. St. R. 291.

In another State, judge attesting must be shown to be judge of court of record; how shown. **Wood**, 103/236, 29 S. E. 820.

In non-conformity to statute, but deed re-executed in compliance therewith, admissible in evidence. **McTyer**, 142/850, 83 S. E. 955.

In one county before notary of another county, and recorded, deed not admissible as title or color. **Gray Co.**, 127/693, 56 S. E. 252.

Attorney in fact, deed signed by, in his own name; sufficient in view of recitals in. **Payton**, 128/517, 58 S. E. 50, 11 Ann. Cas. 163; **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167.

Authority to execute deed, power of attorney necessary. **Williams**, 103/805, 30 S. E. 644.

By charter to execute, want of, when cured by later legislative act. **Kehoe**, 131/269, 62 S. E. 185.

Of partner to make deed for firm. **Cherry Lake Co.**, 10 A. 343, 73 S. E. 610.

Parol, to fill blanks in, and deliver. **Smith**, 111/739, 36 S. E. 957.

To execute, seal as indicating. **Taylor**, 134/479, 68 S. E. 70.

Blank, execution in, void. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

Administrator's deed executed, leaving blanks afterward filled by attorney for heirs, passed title. **Bowen**, 144/1, 85 S. E. 1007.

Certificate; discrepancy in dates of deed and certificate, evidently due to clerical

error, disregarded, when. **Durrence**, 117/385, 43 S. E. 726.

Of officer, presumption in favor of. **Ford**, 117/213, 43 S. E. 483; **Durrence**, 117/388, 43 S. E. 726.

Color of title, delivery as essential to deed serving as. **Dodge**, 131/549, 62 S. E. 987.

Conditional delivery. **Heitmann**, 6 A. 585, 599, 65 S. E. 590; **Anderson**, 125/669, 54 S. E. 679.

Not shown by parol evidence. **Moore**, 107/207, 33 S. E. 65.

Consul of U. S. can take acknowledgment of, at his consulate; his certificate under official seal is evidence thereof. **Long**, 120/621, 48 S. E. 185.

For England in City of New York, attestation by, not good. **McCandless**, 101/180, 28 S. E. 663.

Copy established; judgment conclusive; evidence of non-delivery of original, excluded. **Graham**, 137/668, 74 S. E. 426.

Corporation (bank), conveyance good under charter of; though grantee was officer who acted for grantor. **Flint River Lumber Co.**, 134/627, 68 S. E. 436.

Authority of president to make deed for, must be proved to meet objection. **Taylor**, 134/479, 68 S. E. 70.

Deed without seal of, not admissible in evidence as deed of corporation, without proof of signor's authority. **Bale**, 123/99, 50 S. E. 990.

Authority to execute, presumed from signature of officer accompanied by corporate seal. **Augusta Land Co.**, 140/519, 79 S. E. 138.

Officer of, presumed authorized to execute, where its name as grantor and its seal are affixed by him signing as treasurer. **Carr**, 108/757, 33 S. E. 190.

Execution of deed by, good, though titles of its officers appear typewritten after their signatures. **Reynolds**, 104/704, 30 S. E. 942.

Officers' authority to execute, not imported prima facie where no recital of seal, though signatures followed by

"L. S." **Bank of Garfield**, 138/798, 76 S. E. 95.

Officer's authority to execute, shown prima facie by recital and "[Seal]." **Boone**, 147/812, 95 S. E. 707. See **Frazier**, 147/654, 95 S. E. 211; **Missouri Life Ins. Co.**, 147/677, 95 S. E. 244.

Prima facie evidence of president's authority to execute deed for. **Cannon**, 136/167, 71 S. E. 142, Ann. Cas. 1912 C. 39.

Due execution and attestation of deed of. **Glover**, 137/684, 73 S. E. 1068, Ann. Cas. 1913 B. 191.

Power of attorney to execute deed of, when must bear seal of corporation. Proof of officer's authority where seal not used. **Dodge**, 109/395, 34 S. E. 672.

Presumption that deed was deed of, from seal, etc. **Almand**, 113/984, 39 S. E. 421.

Seal of, affixed to deed, presumption from. **Nelson**, 129/36, 58 S. E. 697.

Treasurer's authority to execute, when presumed. **Nelson**, 129/37, 58 S. E. 697.

See catchword **Seal**.

Decedent, grantor incompetent as witness to deny delivery to. **Hill**, 146/307, 91 S. E. 204.

Grantor can deny delivery as against heirs of deceased grantee. **Hall**, 148/812, 98 S. E. 549.

Declaration of deceased grantor, admissibility of, on issue as to delivery of deed. **Chambers**, 113/344, 38 S. E. 848.

Duress, allegations not supporting theory of. **Hickman**, 145/368, 89 S. E. 330.

Causing execution of, not affecting innocent grantee. **Skinner**, 126/761, 55 S. E. 914.

Circumstances showing signing under. **Gilmore**, 137/273, 73 S. E. 364.

Conveyance obtained by, avoided; wife's deed to release husband from imprisonment on his debt. **Jordan**, 143/143, 84 S. E. 549, L. R. A. 1915D, 1122.

Conveyance obtained by, voidable; parent's deed to secure debt of son under arrest. **Hodges**, 146/624, 92 S. E. 49.

Of threatened criminal prosecution, evidence did not show that wife's deed to husband's creditor was made under. **Smith**, 143/837, 85 S. E. 1034. See **Dorsey**, 143/186, 84 S. E. 467, Ann. Cas. 1917A, 172.

To compel making of deed, facts not amounting to. **Hughie**, 105/368, 31 S. E. 109.

Entry on deed, conveying back to vendor, no proof of delivery, good objection to. **Williamson**, 110/53, 35 S. E. 301.

Escrow, admissibility of parol proof that instrument was intended to be. **Pidcock**, 7 A. 299, 301, 66 S. E. 971.

Can not be delivered as such to grantee or his attorney. **Dixon**, 102/461, 31 S. E. 96, 66 Am. St. R. 193; **Mays**, 117/814, 45 S. E. 68; **Anderson**, 125/664, 54 S. E. 679.

Rule that no delivery in escrow can be made to grantee; not applied to ordinary contract. **Heitmann**, 6 A. 585, 599, 65 S. E. 590.

Defined; deed remaining in maker's control is not strictly an escrow. **Anderson**, 125/678, 54 S. E. 679.

Agency of depositary of. **Dixon**, 102/461, 31 S. E. 96, 66 Am. St. R. 193.

Deposited by grantor as security to holder discounting purchase money notes of grantee, effect of; and of accompanying quitclaim to holder. **Atlanta Banking Co.**, 115/53, 41 S. E. 247.

Improperly delivered, estoppel of grantor, as against purchaser from grantee. **Mays**, 117/814, 45 S. E. 68.

Improperly delivered, rule that bona fide purchaser from grantee therein is not protected, not apply where grantee was in possession at time of delivery in escrow. **Mays**, 117/814, 45 S. E. 68.

Obtained by fraud practiced upon depositary by grantee, passes no title.

Dixon, 102/461, 31 S. E. 96, 66 Am. St. R. 193.

Purchasers from grantee in, when not protected. **Dixon**, 102/461, 31 S. E. 96, 66 Am. St. R. 193.

Relative rights of holder of bond for title and depositary holding purchase-money notes. **Hardin**, 125/820, 54 S. E. 755.

Rights of transferee of purchase-money notes under deed held in, not defeated by vendor and vendee. **Field**, 142/425, 83 S. E. 93.

To be held until "final" notes are paid, contemplates payment of all purchase-money notes. **Field**, 142/425, 83 S. E. 93.

Estoppel to deny, as against third persons, where grantor had deed recorded. **Equitable Mortgage Co.**, 105/555, 31 S. E. 395.

Delivery of, improper; whether ratified, for jury. **Dixon**, 102/461, 31 S. E. 96, 66 Am. St. R. 193.

Evidence of making of conveyance by testatrix, that was not delivered, etc., when properly rejected. **Lewman**, 132/485, 64 S. E. 544.

To support deed invalid for insufficient execution of power to make it, what not admissible. **Weeks**, 133/472, 66 S. E. 168, 134 Am. St. R. 226.

As to delivery, admissible. **White S. M. Co.**, 17 A. 48, 86 S. E. 257; **Chambers**, 113/344, 38 S. E. 848.

Not sufficient to show delivery. **Martin**, 141/201, 80 S. E. 629.

Showing delivery. Grantor may testify as to his intention to deliver. **Toole**, 107/474, 478, 33 S. E. 686.

Sufficient, as to delivery. **Morehead**, 131/808, 63 S. E. 507.

What testimony admissible as to delivery by witness present at time of execution. **Brinkley**, 131/226, 62 S. E. 67.

"Executed," as used by attesting witness, included delivery. **Brockett**, 18 A. 672, 90 S. E. 366.

Deed is, when signed and delivered, though no possession under, and

though consideration illegal or immoral. **Watkins**, 118/372, 45 S. E. 262.

Foreign deed, attestation and certificate, what sufficient. **Ford**, 117/210, 43 S. E. 483; **Durrence**, 117/385, 43 S. E. 726.

Attested by judge, what must be shown to admit to record or in evidence. **Wood**, 103/236, 29 S. E. 820.

Indorsement of power on deed, duly witnessed, did not cure defective attestation of deed itself and make it recordable. **Gray Co.**, 127/694, 36 S. E. 252.

Infant, deed to, rule as to delivery. **Jenkins**, 109/35, 34 S. E. 355.

Delivery to, by delivery to parent, though deed does not purport on its face to be delivered. **Parker**, 101/161, 28 S. E. 681, 65 Am. St. R. 291.

Delivery to parent in behalf of infant donees. **Kelly**, 135/507, 69 S. E. 724.

Issue of execution of deed and power of attorney, for decision of jury, not charge of court. **Fullbright**, 131/343, 62 S. E. 188.

Levy and sale unlawful, where deed filed is not legally attested for record. **McCandless**, 101/180, 28 S. E. 663.

See **Deeds**, 2, catchwords **Levy and Sale**.

Livery of seisin does not exist. Delivery of deed passes title. **Beard**, 120/1019, 48 S. E. 400; **Watkins**, 118/374, 45 S. E. 262.

Lost deed, contents of, not testified to, without evidence of proper execution. **Dasher**, 102/830, 30 S. E. 544.

Existence and due execution of, necessary to admit secondary evidence of contents. **Smith**, 106/303, 31 S. E. 762; **Griffin**, 115/613, 41 S. E. 1003.

Execution of, sufficiently shown by proof here. **Equitable Securities Co.**, 113/1013, 39 S. E. 434.

Proof of execution of. **Dyson**, 130/573, 61 S. E. 468.

Mark as signature; need not be between given name and surname. **Horton**, 117/74, 43 S. E. 786.

Municipal corporation, deed here treated as deed of, though not signed in its name but in name of mayor. **Acme Brewing Co.**, 115/495, 42 S. E. 8.

Notary public, witness not qualified as, but deed binding. **Newman**, 108/339, 33 S. E. 997.

Parol authority to make delivery. **Smith**, 111/739, 36 S. E. 957.

Parol evidence of execution and delivery of deed (now lost) by deceased to witness as grantee, when competent. **Roberts**, 136/901, 72 S. E. 234.

Partnership, deed from, when not excluded from evidence because not executed by all partners. **Shippen Lumber Co.**, 141/367, 80 S. E. 1002.

Authority of partner to make deed for. **Cherry Lake Co.**, 10 A. 343, 73 S. E. 610.

Place of execution presumed at place named in caption, contrary not appearing. **McCandless**, 101/180, 28 S. E. 663.

Presumed as in county named in caption, if no evidence otherwise. **Flint River Lumber Co.**, 134/631, 68 S. E. 436.

Presumed to be place named in caption; contrary shown when attestation clause recites another place. **Gress L. Co.**, 105/847, 32 S. E. 632.

Not shown, no reason for excluding unrecorded land deed. **Mallard**, 19 A. 99, 90 S. E. 1044.

Presumption of execution within jurisdiction of attesting officer. **Glover**, 137/684, 692, 73 S. E. 1068, Ann. Cas. 1913B, 191.

See catchword **Attestation**.

Pledge not created by delivery of deed. **Fleming**, 120/1027, 48 S. E. 420.

Power of attorney, deed held to be executed under, though signed by attorney in his own name (A, "attorney in fact" for B), where recitals in the deed showed it was made under the power. **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167.

Necessary to authorize another to execute. **Williams**, 103/805, 30 S. E. 644.

Not accompanying, deed good as color of title. **Connell**, 111/805, 35 S. E. 667.

Presumption of regularity and authority, when not raised by lapse of forty years. **Sapp**, 131/433, 62 S. E. 529.

Presumption of delivery of deed. **Horton**, 115/70, 41 S. E. 253. Presumption that deed was turned over by the grantee to a purchaser to whom he deeded the property. **Acme Brewing Co.**, 115/494, 42 S. E. 8.

On date of deed. No presumption that grantor thereafter has access to, or could make indorsement on. **McBrayer**, 122/245, 50 S. E. 95; **Dorough**, 118/179, 45 S. E. 22.

What competent to rebut. **Scarborough**, 127/257, 56 S. E. 293.

When not rebutted. **Dixon**, 102/470, 31 S. E. 96, 66 Am. St. R. 193.

Where duly attested deed found in safety-deposit box where deceased grantee's papers were kept. **Hill**, 146/307, 91 S. E. 204.

Where trustee entered on deed his acceptance. **New S. B. & L. Asso.** 101/678, 29 S. E. 15.

From possession of deed by grantee or one taking interest under it. **Mays**, 137/27, 72 S. E. 408.

From recital and record. **Watkins**, 118/374, 45 S. E. 262.

From recording. **Brockett**, 18 A. 672, 90 S. E. 366; **Garnett**, 23 A. 432, 98 S. E. 363; **Goodwynne**, 116/907, 43 S. E. 275.

From usual attestation and record, not conclusive. **Shelton**, 148/128, 96 S. E. 3; **Hall**, 148/816, 98 S. E. 549.

From record of duly executed deed; subject to rebuttal. **Mays**, 137/27, 72 S. E. 408.

By record, overcome by testimony. **Follendore**, 110/362, 35 S. E. 676; **Bourquin**, 110/440, 35 S. E. 710; **Stallings**, 110/875, 36 S. E. 227.

From due record, when not rebutted. **Allen**, 106/775, 32 S. E. 927.

From registration, when not apply to deed recorded after maker's death. **Equitable Mortgage Co.**, 105/474, 30 S. E. 687.

Proof of execution when required. **Holtzclaw**, 114/714, 39 S. E. 849; **Loggett**, 114/714, 40 S. E. 736; **Crummey**, 114/746, 40 S. E. 765; **McCall**, 114/752, 40 S. E. 768.

When not necessary, as to recorded deed. **Smith**, 10 A. 281, 73 S. E. 428.

When unnecessary. **Follendore**, 110/359, 35 S. E. 676.

Unnecessary; deed produced by plaintiff under notice from defendant, though plaintiff did not claim under it. **Barnes**, 136/164, 71 S. E. 129.

By circumstantial evidence; circumstances insufficient here. **Bentley**, 119/530, 46 S. E. 645. Not necessary, where admitted by plea. **Vizard**, 119/918, 47 S. E. 348.

How made where attesting witnesses fail to prove. **Howard**, 104/231, 30 S. E. 802.

Registration, delivery to clerk for; intervening liens before ratification by grantee take precedence. **Evans**, 101/152, 28 S. E. 645. Recorded deed admissible to show both execution and delivery. **Parker**, 101/166, 28 S. E. 681, 65 Am. St. R. 291. Presumption of delivery from record; see catchwords **Presumption of delivery**.

Seal not essential to deed. **Atlanta R. Co.**, 124/930, 53 S. E. 701, 6 L. R. A. (N. S.) 436, 110 Am. St. R. 215. **Vizard**, 119/923, 47 S. E. 348.

As importing authority to execute, should be recited in body as well as affixed to instrument. **Bank of Garfield**, 138/798, 76 S. E. 95.

Deed not void for absence of. Deed under seal, on power of attorney not sealed, not binding on grantor. **Henderson**, 147/371, 94 S. E. 251.

Of corporation imports presumptive authority to execute. **Taylor**, 134/479, 68 S. E. 70; **Blakely Artesian Ice Co.**, 13 A. 574, 577, 79 S. E. 526.

Of corporation; scroll with the word "Seal" in it, in certified copy of record of deed, when treated as indicating

that corporate seal was attached. **Acme Brewing Co.**, 115/495, 499, 42 S. E. 8.

When (L. S.) presumed to be adopted by corporation for executing deed. **Cannon**, 136/167, 71 S. E. 142. Ann. Cas. 1912C, 39.

Seal: See catchword **Corporation**.

Signature of maker need not be at end of deed. When signed with his mark, it need not be between given name and surname. **Horton**, 117/74, 43 S. E. 786.

Signer's inability to write, may be proved. **Hansen**, 132/649, 64 S. E. 800.

Signing, whether in representative capacity. **Payton**, 128/517, 58 S. E. 50, 11 Ann. Cas. 163; **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167. See **Board of Education**, 128/162, 57 S. E. 359.

As "executor of" etc., effect of. **Dozier**, 117/789, 45 S. E. 61.

By one not named in deed bound him as grantor, though another signer was named as grantor. **Sterling**, 129/309, 58 S. E. 828, 13 L. R. A. (N. S.) 298, 121 Am. St. R. 224, 12 Ann. Cas. 201.

Burden of proof of authority for, where maker could not write. **Hansen**, 132/649, 64 S. E. 800.

Without reading. **McDonald**, 117/121, 43 S. E. 422.

Without reading, insufficient allegation as to, in plea attacking deed as void. **Gross**, 128/83, 57 S. E. 94.

Third person, delivery to, grantee afterward ratifying; intervening judgment lien against grantor attaches. **Evans**, 101/152, 160, 28 S. E. 645.

Title conveyed to P. individually, by deed to P., vice-president of a corporation. **Greenfield**, 122/303, 50 S. E. 111.

Deed as conveyance of, must be signed by all the owners. If signed by some of them, it may operate as color of title, effective where accompanied by adverse possession. **Hansen**, 132/649, 64 S. E. 800.

Delivery essential to convey. **Cowart**, 139/432, 77 S. E. 382.

Passed here, as against vendor, though delivery not made. *Bourquin*, 110/440, 35 S. E. 710.

Validity, delivery essential to. *Miller*, 139/29, 76 S. E. 585.

Delivery necessary to, but may be inferred from various circumstances. *Mays*, 137/28, 72 S. E. 408.

What constitutes delivery of deed. *N. Y. Life Ins. Co.*, 104/77, 30 S. E. 273, 42 L. R. A. 88, 69 Am. St. R. 134.

Witnesses, three, not alone change character of paper from deed to will. *Jones*, 120/693, 695, 48 S. E. 190.

6. FORGERY OF DEEDS.

Addition, erasure, or mutilation, of effect prejudicial to rights of other party, forgery by. *Gorham*, 137/139, 72 S. E. 893.

Affidavit of forgery casts burden of proving genuineness on party offering deed. *James*, 147/598, 95 S. E. 11.

Ancient deed subject to attack for forgery, though offered by certified copy; and affidavit of forgery puts burden of proof on party offering deed. *McCall*, 114/752, 40 S. E. 768; *Bentley*, 119/530, 46 S. E. 645.

May be attacked as forgery. *Chatman*, 127/360, 56 S. E. 439; *Albright*, 106/302, 31 S. E. 761.

May be found a forgery from its face and entries, without aliunde evidence. *Daugharty*, 134/651, 68 S. E. 472.

Authority to fill blanks in deed, on issue as to, no question of forgery raised. *Bowen*, 144/1, 85 S. E. 1007.

Burden of proof on issue of forgery, on party alleging, except under C. C. § 4210. *Haithcock*, 145/84, 88 S. E. 550.

On issue of forgery, though recorded and apparently over thirty years old. *Chatman*, 127/360, 56 S. E. 439.

On issue of forgery; what evidence necessary. *Strickland*, 142/120, 82 S. E. 531.

Cancellation as forgery. *Smith*, 139/10, 76 S. E. 362.

Trial of case; admissibility in evidence of plea in other suit, signed by plaintiff. *Stewart*, 143/22, 84 S. E. 63.

Prima facie case made, and non-suit error, in suit for, where plaintiff testified he had not made or signed the deed in question. *Jenkins*, 128/801, 58 S. E. 354.

Of forgery, as cloud on title. *Toland*, 144/338, 86 S. E. 1089.

Collateral issue of forgery; writ of error from refusal of new trial on, premature, before final disposition of main case. *Smith*, 128/368, 57 S. E. 685.

Continuance to enable party to attack deed as forgery. *Leverett*, 6 A. 91, 64 S. E. 317.

Deed more than thirty years old and recorded, how attacked as; burden of proof. *McArthur*, 107/796, 34 S. E. 205.

Evidence and instruction to jury on issue of forgery. *Williams*, 142/126, 82 S. E. 522.

Of existence and genuineness of deed, not sufficient, on issue of forgery. *Chatman*, 127/360, 56 S. E. 439.

Sufficient to submit issue of forgery. *Flint River Lumber Co.*, 134/627, 68 S. E. 436.

Demanded finding that deed was forgery. *Gorham*, 137/134, 72 S. E. 893.

Of forgery by certificate of executive department as to official witness. *Durham Coal Co.*, 142/725, 727, 83 S. E. 683.

Sufficient to show genuineness. *Stegall*, 147/447, 94 S. E. 541. Not so. *James*, 147/598, 95 S. E. 11.

Injunction, forgery as ground of attacking deed on interlocutory hearing for. *Knight*, 126/231, 55 S. E. 31.

Issue of forgery, by affidavit, puts burden of proof of genuineness on party asserting it; though tried together with other issues in the case. *Sapp*, 131/434, 62 S. E. 529.

Confined to factum; estoppel in pais not passed on. **Roberts**, 101/765, 29 S. E. 271.

Comprehended by general verdict in action as to cutting timber. **Camp Lumber Co.**, 144/445, 87 S. E. 413.

In ejectment case. No writ of error on collateral issue while main case pending. **Jones**, 106/850, 33 S. E. 41.

Only the factum involved in. If executed, finding of forgery unauthorized, though grantee's conduct and words may estop him. **Smith**, 127/483, 56 S. E. 640.

Should be raised, if genuineness suspected. **Dodge**, 131/552, 62 S. E. 987.

Judge can not assume that deed is forgery from circumstantial evidence, opinions of witness, and comparison of handwriting. **Crummey**, 114/746, 40 S. E. 765.

Mark, deed signed by; evidence showing that vendor could write her name. **Stewart**, 143/22, 84 S. E. 63.

Mode of attacking deed as forgery; burden of proof. **Leverett**, 6 A. 91, 64 S. E. 317.

Prescription might be based on forged deed, if prescriber entered in good faith. **Shingler**, 135/667, 70 S. E. 563.

Recorded deed subject to attack as forgery. **Hansen**, 132/649, 64 S. E. 800.
Record of deed does not change burden of proof on issue of forgery. **Chatman**, 127/360, 56 S. E. 439.

Sayings and affidavit of grantor, forgery not shown by. **Byrd**, 108/2, 33 S. E. 688.

Special issue of forgery separately tried before deed received in evidence. It may be attacked by allegation and evidence after its introduction. **Webb**, 134/388, 67 S. E. 1034.

Practice as to motion for new trial and exception. **Grisham**, 148/271, 96 S. E. 563.

Triable with main case, by consent under approval of court. **Haithcock**, 145/84, 88 S. E. 550.

Title, deed found to be forgery will not operate to convey, to grantee or hold-

ers under him. **Sapp**, 131/434, 62 S. E. 529.

Trial of issue of forgery. Civil Code, § 4210, applies to registered deeds, not to fi. fa. accompanying sheriff's deed and attacked with it as forged. **Vickers**, 128/794, 58 S. E. 44.

Of issue with main case by same jury, when no error. Recital in other deed inadmissible. **James**, 147/598, 95 S. E. 11.

Verdict on issue of forgery settles question of genuineness. **Strickland**, 142/121, 82 S. E. 531.

7. RECORD AND REGISTRATION.

Administrator's deed prevails over unrecorded deed made by intestate seventy-two years before. **Rowe**, 139/318, 77 S. E. 17.

Affidavit for probate, signed with name different from that given in the body thereof as the affiant's, will not admit instrument to record. **Dodge**, 109/395, 34 S. E. 672.

Of one who signed usual attestation clause but did not hear grantor acknowledge or see him sign, record on, not good. **Baxley**, 117/60, 43 S. E. 436.

Alteration in registered deed presumed made at or before its execution, if no affidavit of forgery. **Gilmer**, 146/721, 92 S. E. 67; **McConnell**, 134/99, 67 S. E. 440.

Attestation, admission to record on. **Glover**, 137/684, 73 S. E. 1068, Ann. Cas. 1913B, 191.

Insufficient for record; deed conveys title as against grantor and heirs. **Munroe**, 145/215, 88 S. E. 947.

Attack on, by one of parties claiming under grantee, when not allowed. **Gable**, 130/689, 61 S. E. 595.

By sole witness, though notary, does not entitle deed to registry. **Kimbrell**, 139/146, 76 S. E. 1024.

Invalid, record on, not such notice as to give priority over younger lien.

Southern Iron &c. Co., 138/258, 75 S. E. 248, 41 L. R. A. (N. S.) 375, Ann. Cas. 1913D, 369.

Insufficient, certified copy of record on, inadmissible. **Simmons, 144/845, 88 S. E. 199.**

Insufficient, record on, a nullity. **McCandless, 101/180, 28 S. E. 663.**

Of notary, without second witness, record on, unauthorized. Not admissible as evidence. **Kimbrell, 139/146, 76 S. E. 1024.**

Lacking, record of deed accomplishes nothing. **Stallings, 110/882, 36 S. E. 227.**

By only one witness, not authorize record of timber lease. **National Produce Co., 10 A. 342, 73 S. E. 606.**

Insufficient for record of deed, not cured by recording certified copy with affidavit to probate thereon. **Griffin, 115/610, 41 S. E. 1003.**

Bona fide purchaser under recorded deed to wife, without notice of older unrecorded deed to husband, protected. **Wheatley, 143/642, 85 S. E. 878.**

Books of record worn and faded, how restored. No authority for employment of non-officer to make copies. **Henry, 137/153, 72 S. E. 1021.**

Record in wrong book, not constructive notice. **Williams, 128/314, 57 S. E. 801.**

Certified copy from record: see **Deeds, 4, catchword Copy.**

Character, registry does not give, to deed, but is notice of the deed. **New South B. & L. Asso., 101/679, 29 S. E. 15.**

Clerical error (T. for H.), record of deed as notice, when not invalidated by. **Roberson, 120/833, 48 S. E. 429, 102 Am. St. R. 128, Ann. Cas. 757.**

In recital in record of sheriff's deed, as to date of levy; correct date shown by testimony of sheriff. **Hopson, 22 A. 392, 95 S. E. 1015.**

Clerk of court of other State, registration of deed in 1883, not authorized, where acknowledged before. Otherwise since act of 1893. **Crummey, 114/746, 40 S. E. 765.**

Color of title: See **Deeds 2, catchwords Color of title.**

Conditional bill of sale, record of; mere filing not notice of reservation of title, **Battle, 18 A. 526, 89 S. E. 1050.** Compare **Blakely Artesian Ice Co., 13 Ga. App. 574, 578.**

Not recorded; third persons as to whom reservation of title is invalid; subsequent judgment superior. **Phillips & Crew Co., 13 A. 764, 79 S. E. 952; Tremere, 12 A. 774, 78 S. E. 729.**

Omission to record, not subject property to previous debt. **Taylor, 8 A. 283, 68 S. E. 1009.**

Constructive notice by record, doctrine applied only to deeds on valuable consideration. **Lawson, 146/421, 91 S. E. 469.**

Record was not, of conveyance by third person as security for debt. **Hinton, 147/603, 95 S. E. 1.**

Record did not operate as, to purchaser bona fide, on what facts. **Coursey, 141/66, 80 S. E. 462.**

Record was, to later grantees. Actual notice not required. **Leffler Co., 146/742, 92 S. E. 214.**

Constructive possession, record of deed as showing. **Floyd, 129/669, 59 S. E. 909; O'Brien, 123/427, 51 S. E. 405.** Possession of part of tract conveyed by improperly recorded deed, not construed to extend to the rest of the tract. **Baxley, 117/61, 62, 43 S. E. 436.**

Record as essential to, not necessary before Code of 1895. **Dodge, 131/549, 62 S. E. 987.**

County where land lies, deed admissible to record in, though attested by notary public of other county. **Austin, 122/440, 50 S. E. 382.**

From which land transferred to new county, record in, before time fixed for new organization, lawful. **Sapp, 131/433, 62 S. E. 529.**

Cross-deeds before act of 1889 (C. C. § 3320); neither recorded in twelve months, older prevails. Same rule where junior deed executed by adminis-

- trator of common propositus. **Davis**, 143/100, 84 S. E. 426.
- Defect in probate of power of attorney**, not cured by recording. **Dodge**, 109/396, 34 S. E. 672.
- Delivery**, record as evidence of: see **Deeds**, 5, catchwords **Presumption of delivery**.
- Determinable interest in timber**, deed to, held entitled to be recorded. **McRae**, 111/65, 36 S. E. 604, 55 L. R. A. 513.
- Equitable remedy of subsequent creditor**, record does not necessarily prevent. **Lane**, 140/416, 78 S. E. 1082.
- Escrow**, effect of registration before delivery of deed as. **Equitable Mortgage Co.**, 105/555, 31 S. E. 395.
- Filed for record by depositary, conveyed title; defeasance deed void on payment of purchase-money. **Ray**, 147/265, 93 S. E. 418.
- Estoppel of maker of deed to set up priority of record of another**. **Campbell**, 111/200, 36 S. E. 621.
- Evidence (parol) of contents of deed in hands of non-resident grantees not parties**, not admissible, without proof of no record. **McConnell**, 134/95, 67 S. E. 440.
- Effect of record as. **Cammon**, 20 A. 175, 92 S. E. 957.
- Recorded deeds admissible in, without proof: see notes under **Deeds**, 4.
- Failure to record**, conflict of decisions as to; priority of record discussed. **Henderson**, 128/804, 58 S. E. 624.
- Filing**, equivalent to recording, as notice to third persons, and to admit deed in evidence without further proof. **Durrence**, 117/385, 43 S. E. 726; **Merrick**, 14 A. 81 80 S. E. 343.
- For record operates as notice. **Blakeley Artesian Ice Co.**, 13 A. 574, 578, 79 S. E. 526.
- Of quitclaim, for record. **Glover**, 137/684, 73 S. E. 1068, Ann. Cas. 1913B, 191.
- Within year gave junior deed no priority over older one, where record not actually made within year. **Davis**, 143/100, 84 S. E. 426.
- Takes place of record under act of 1889. **Wadley Lumber Co.**, 130/141, 60 S. E. 836.
- Deeds treated as recorded from time of. **Henderson**, 128/808, 58 S. E. 624. Though not recorded, or recorded in wrong book. **Durrence**, 117/385, 43 S. E. 726; **Greenfield**, 122/303, 50 S. E. 111; **Merrick**, 14 A. 81, 80 S. E. 343.
- Failure or error of clerk as to record, not defeat grantee who has properly filed deed. **Durrence**, 117/386, 43 S. E. 726.
- Husband's conveyance to wife**, unrecorded, but his and her subsequent grantee charged with notice of. **Zorn**, 108/78, 34 S. E. 303.
- Record under Civil Code, § 3002, not required of conveyance by solvent husband to wife after marriage. **Coleman**, 102/576, 28 S. E. 973.
- Imperfect record or insufficient attestation for record** did not justify rejection of title by vendee not contracting for record title. **Cowdery**, 126/792, 55 S. E. 918, 8 L. R. A. (N. S.) 137.
- Instrument described**, record of, held not admissible in evidence as color of title. **Turner**, 141/27, 80 S. E. 401.
- Junior deed**, duly recorded, taken without notice of senior, not recorded, prevails over it. **Coleman**, 101/303, 28 S. E. 861.
- Recorded before older deed, has priority, when. **Lindley**, 115/662, 42 S. E. 79.
- Takes priority only after filed for record. As to previous trespass, senior unrecorded deed prevails. **Wadley Lumber Co.**, 130/136, 60 S. E. 836.
- Lien of distress warrant superior to security deed recorded after levy**. **Virginia-Carolina Chemical Co.**, 139/674, 78 S. E. 27.
- Of unrecorded security deed, record of agreement extending to additional debt, not necessary, to prevent judgment for unsecured debt from obtaining priority. **McClure**, 115/709, 42 S. E. 53.
- Life-tenant**, record postponed till after incumbrance by, did not affect remain-

dermen under deed. **New South B. & L. Asso.** 101/679, 29 S. E. 15.

Lost deed, record of; testimony of mutilation of record books, etc., when not relevant. **Orr**, 145/137, 88 S. E. 669.

Notice actual binds from its date, though registry be later. **Davitte**, 108/669, 34 S. E. 327.

By record of deed, that possession of part was constructively of whole land. **Wilcox**, 118/353, 45 S. E. 400.

By record of deed to subsequent grantees, of easements and rights conveyed. **Horne**, 142/489, 83 S. E. 204, Ann. Cas. 1916B, 1212.

As to limited quantity of land taken by vendee and holders under him. **Ellis**, 147/316, 93 S. E. 895.

Record of deed as. **Street**, 118/470, 45 S. E. 470, 45 S. E. 294.

Record as; effect of non-record. **Zorn**, 108/80, 34 S. E. 303.

Record as, where no actual knowledge. **McElwaney**, 131/98, 62 S. E. 20.

Compare, as to record of will, with **Peavy**, 131/105, 62 S. E. 47.

Oldest recorded deed to timber, when prevails. **Brinson**, 122/487, 50 S. E. 369.

Postponement of older unrecorded deed to younger deed timely recorded, taken without notice of older. **Coleman**, 101/303, 28 S. E. 861.

Power of attorney, record of deed referring to prior record of. The two records need not be "along together." **Flint**, 122/5, 49 S. E. 745, 106 Am. St. R. 85.

Prescriptive title, necessity for record, to make out. **Roberson**, 120/833, 48 S. E. 429, 102 Am. St. R. 128, 1 Ann. Cas. 757.

Presumptions in favor of recorded deed, and how removed. **Hanser**, 132/648, 662, 64 S. E. 800.

Prior recorded deed conveying title out of plaintiff's grantor, and defendant's possession therewith connected, defeated plaintiff. **Hamilton**, 127/762, 56 S. E. 1022.

Priority from registration, law as to, does not affect method of subjecting land

by filing and recording reconveyance. **Dedge**, 138/787, 76 S. E. 52.

Of conveyance held over later deed made by executors of general devisee of first grantor, though later deed first recorded. **McCaskill**, 138/124, 74 S. E. 1032.

Not given by record to deed of general devisee, as against deed of testator, subsequently recorded. **Henderson**, 128/804, 58 S. E. 624. Unrecorded deed of testatrix ordinarily is inferior to recorded deed of her devisee to purchaser without notice. Not so where her will recognized title of her grantees. **Equitable Loan Co.**, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 8791.

Of deed from sheriff, duly recorded, over unrecorded deed made before judgment, sheriff's vendee being without notice. **McCandless**, 108/618, 34 S. E. 142.

Of junior recorded over unrecorded deed of which junior grantee had notice. **Webster**, 142/806, 83 S. E. 941.

Of deed, not lost by failure to record again, under act of 1883. **Ashburn**, 112/474, 37 S. E. 703.

Of recorded deed (which is inferior to lien) over later deed in settlement of lien. **Hodnett**, 131/68, 61 S. E. 1124.

Of record gave no priority of title, on the special facts. **Payton**, 148/486, 97 S. E. 69.

Recording not necessary to give, to deed of bargain and sale, over subsequent judgment or attachment. **Smith**, 10 A. 281, 73 S. E. 428; **Balchin**, 10 A. 434, 73 S. E. 613.

Of younger deed, when results from recording it first. **Lindley**, 115/662, 42 S. E. 79.

Between unrecorded deeds executed prior to act of 1889. **Lee**, 103/355, 30 S. E. 356.

Recital in registered security deed referring for description of land to survey and another paper, both unrecorded, sufficiency of, as notice to subsequent purchaser. **Talmadge**, 105/550, 31 S. E. 618.

Re-recording act of 1883, effect of. Ashburn, 112/474, 37 S. E. 703.

Security deed recorded is notice of grantee's rights. Mattlage, 106/834, 32 S. E. 940.

Effect of security deeds to same property, when first one not recorded. Cooper, 143/64, 84 S. E. 123.

Signatures to recorded deed presumed genuine, subject to attack and proof of forgery. Hansen, 132/649, 64 S. E. 800.

Tax deed, effect of record of. Bennett, 123/618, 51 S. E. 654.

Failure to file, for record, loses title as against purchaser under judicial sale, without actual notice of tax title. Maddox, 122/671, 50 S. E. 668.

Title, record of conveyance not essential to convey, as between parties to the contract. Cooper, 143/64, 84 S. E. 123.

Trust, for minors, not required to be recorded in three months after execution. Heatley, 135/154, 68 S. E. 783.

Unrecorded deed to bona fide purchaser, not postponed to prior execution not recorded until after deed made. Harvey, 107/740, 33 S. E. 713.

Does not prevail against bona fide purchaser at judicial sale. Ousley, 111/738, 36 S. E. 750.

Possession under, as notice of character and extent of occupant's title to whole lot. Terrell, 130/633, 61 S. E. 485.

Voluntary deed, effect of record of. Baxley, 117/62, 43 S. E. 436.

Effect of record of, on right of one occupying status of purchaser for value. Lane, 140/416, 78 S. E. 1082.

Record does not affect subsequent purchaser for valuable consideration without actual notice. Finch, 113/996, 39 S. E. 418; Scott, 114/134, 39 S. E. 942; Isler, 134/197, 67 S. E. 854.

Unrecorded, not postponed to subsequent recorded voluntary deed. Toole, 107/472, 33 S. E. 686.

Without notice of prior voluntary conveyance unrecorded, gives second V. II—30.

grantee no priority. Lawson, 146/421, 91 S. E. 469.

Unrecorded, not postponed to junior judgment, when. Lytle, 107/386, 33 S. E. 414,

Actual notice required, to give priority to. Avera, 147/24, 92 S. E. 533.

Record does not give priority to, over prior deed on valuable consideration. Byrd, 108/1, 33 S. E. 688; Deen, 128/265, 57 S. E. 427.

5. SECURITY DEEDS.

Absolute on face, deed is security for debt when. Fleming, 120/1023, 48 S. E. 420. Security for debt, absolute on face; facts raising bar to right to redeem. Adverse possession and prescriptive title. Admissibility of evidence, and charge to jury. Walker, 141/435, 81 S. E. 203.

Additional debt, security deed extended to, by subsequent unrecorded agreement; lien was superior to that of judgment for unsecured debt created after deed was recorded. McIntire, 8 A. 802, 70 S. E. 198.

Security deed extended to, by subsequent agreement; lien was superior to that of judgment for unsecured debt, rendered after deed was recorded, though the agreement was not recorded. McClure, 115/709, 42 S. E. 53.

Security deed can not, after payment of the debt secured, be made, by parol agreement, to stand as security for further indebtedness. Pierce, 111/725, 37 S. E. 79.

Agreement to reconvey on payment of debt, effect of. Owens, 13 A. 419, 79 S. E. 225.

Amount of debt secured need not be specified in the deed. Different rule as to mortgages. Effect of so specifying. Troup, 23 A. 750, 99 S. E. 541.

Barred debt not collected by enforcing equitable lien arising from security deed. Story, 110/65, 35 S. E. 314.

- Rights of holder of security deed in case of. **Conway**, 121/257, 48 S. E. 956, 2 Ann. Cas. 269.
- Bill of sale to secure debt**, distinguished from mortgage. **Owen**, 13 A. 419, 79 S. E. 225; **Dewit**, 17 A. 666, 87 S. E. 1100.
- When passed title. **Bellerby**, 105/487, 30 S. E. 425.
- Not here authorized by power of attorney. **Farmers Warehouse Co.**, 22 A. 740, 97 S. E. 200.
- Not exceeding \$100 principal, foreclosed in same manner as mortgage on personalty. **Robinson**, 22 A. 56, 95 S. E. 316.
- May be treated as equitable mortgage. **Farmer**, 18 A. 307, 89 S. E. 382.
- May be included in due-bill. **Smith**, 8 A. 768, 70 S. E. 195.
- Effect of indorsement, as transfer of title to property described therein. **Dawson**, 8 A. 585, 69 S. E. 1133.
- Construed as to debt secured; meaning of "any balance on account or note that I may be due the said [creditor] at any time." **Skinner**, 17 A. 512, 87 S. E. 759.
- Bona fide purchaser without notice**, effect of conveyance to, by grantee in security deed. **Mercer**, 136/632, 633, 71 S. E. 1075.
- Holder of security deed, entitled to same protection as holder of deed of bargain and sale. **Scott**, 114/134, 39 S. E. 942.
- Bulk sale of stock of goods**, security deed not within law as to. **Avery**, 18 A. 527, 89 S. E. 1051.
- Cancellation of security deed** eliminated grantor from transaction. **Jordan**, 145/890, 90 S. E. 41.
- Of security deed, right of action for, in debtor's widow. **Owens**, 148/676, 97 S. E. 856.
- Effect of failure to cancel, where power of sale is exercised after payment of debt. **Garrett**, 128/519, 57 S. E. 792, 119 Am. St. R. 398, 11 Ann. Cas. 167.
- City court**, jurisdiction of, to establish lien of security deed, in suit on note secured by. **Dixon**, 18 A. 45, 88 S. E. 825; **Williams**, 18 A. 242, 244, 245, 89 S. E. 459; **Moore**, 13 A. 60, 78 S. E. 1097.
- Condition precedent**, covenant to surrender security deed and accept substitute was not. **Moore**, 146/197, 91 S. E. 13.
- Conversion of security into absolute title**. **Adams**, 23 A. 741, 745, 99 S. E. 473.
- Corporation**, security deed to, how enforced. **Greenfield**, 122/303, 50 S. E. 111.
- Covenant in deed to secure debt**, as to keeping insurance, construed. **Providential Assurance Society**, 124/399, 52 S. E. 289.
- Dower**, security deed as affecting. **Harris**, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475; **Ferris**, 110/115, 35 S. E. 347.
- Ejectment on security deed**. **Pusser**, 132/282, 64 S. E. 75, 22 L. R. A. (N. S.) 571; **Marshall**, 143/526, 85 S. E. 691.
- Defeated by security deed executed by plaintiff's grantor, and defendant's possession connected therewith. **Hamilton**, 127/763, 56 S. E. 1022.
- Heirs of grantee can recover in. **Doris**, 122/611, 50 S. E. 348.
- Recovery in, by grantee who had previously sold the land to grantor. **Wells**, 145/17, 88 S. E. 562.
- Security deed as basis of, or as outstanding title to defeat ejectment. **Ashley**, 109/655, 35 S. E. 89.
- Equitable rights of debtor**, where creditor or his vendee takes possession of the land. **Coates**, 142/239, 82 S. E. 649.
- Of purchaser were superior to those acquired by grantee in security deed. **Jordan**, 145/890, 90 S. E. 41.
- Equity of redemption**, extinguishment of, where title is held as security. **Adams**, 23 A. 741, 745, 99 S. E. 473.
- Estoppel on holder of security deed**, from denying its character. **McCandless**, 101/180, 28 S. E. 663.
- Evidence not sufficient to show deed was security for account sued on**; judgment establishing special lien, unauthorized. **Thacher**, 21 A. 567, 94 S. E. 838.
- Foreclosure of deed or bill of sale**. **Denton**, 120/1076, 48 S. E. 423.

Not void for variance between amounts in bill of sale and in affidavit. **Robinson**, 22 A. 56, 95 S. E. 316.

Fraud and usury, security deed infected with; tender essential to relief. **Craft**, 135/521, 69 S. E. 742.

Petition to cancel security deed for, good on demurrer. **Leonard**, 102/536, 29 S. E. 147.

Future indebtedness covered by security deed. **Bank of Cedartown**, 146/700, 92 S. E. 213; **Löffler**, 146/741, 92 S. E. 214; **Carrington**, 144/52, 85 S. E. 1027.

Not thereby secured, unless so agreed in writing. When stipulation in note had not this effect. **Fleming**, 120/1023, 48 S. E. 420.

Injunction against sale under foreclosure of security deed, facts requiring. **Jordan**, 145/890, 90 S. E. 41.

Not granted, against sale under levy, at suit of holder of bond for title. **Henley**, 139/342, 77 S. E. 168.

Intent of parties ascertained by looking to whole instrument. **Bank of Cedar-town**, 146/700, 92 S. E. 213.

That deed should operate as security for debt; issue not concluded in distraint proceeding. **Bonds**, 133/452, 66 S. E. 156. See **Bashinski**, 133/39, 65 S. E. 152. Issue raised in claim case. **Cotton**, 133/834, 67 S. E. 81.

Interest taken by grantee in security deed. **Harvard**, 145/583, 89 S. E. 740.

Of grantee or of his grantee is subject to levy; purchaser takes subject to maker's right of redemption. **Bridger**, 126/833, 56 S. E. 97, 8 L. R. A. (N. S.) 463, 115 Am. St. R. 118.

In grantor, security deed leaves none subject to levy under subsequent judgment. **Virginia-Carolina Co.**, 146/482, 91 S. E. 543.

Judgment, later, against debtor, who had assigned bond for title, could not subject the land. **Burney Co.**, 132/852, 65 S. E. 140.

With special lien; proper parties. **Brooke**, 141/493, 81 S. E. 223.

For special lien unauthorized, evidence not showing that deed was se-

cured for account sued on. **Thacher**, 21 A. 567, 94 S. E. 838.

On secured note, proper, but not essential, for special lien to be declared in. **Spradlin**, 146/396, 91 S. E. 409.

General, relation of, with security deed, shown by extraneous evidence. **Anderson**, 147/104, 106, 92 S. E. 934.

General, for the debt secured, priority of, over older judgment rendered after execution of the deed. Deed as evidence to show such priority. **Tripod Paint Co.**, 111/823, 35 S. E. 696.

Setting up lien of security deed in suit on unconditional note, whether verdict necessary or proper. **Koch**, 111/334, 36 S. E. 695; **Bush**, 111/664, 36 S. E. 900.

Entered on docket in ten days and before record of deed, priority of. **Cooke**, 148/289, 96 S. E. 499.

Obtained after execution but before filing of deed for record is superior. **Coley**, 147/150, 93 S. E. 90.

Against grantor in security deed, did not bind grantee, where deed taken before suit. **Elwell**, 101/496, 28 S. E. 833.

Junior security deed defeated by senior, in ejectment. **Hamilton**, 126/28, 54 S. E. 926.

Payment by holder of, to make his own deed effectual. **Coleman**, 101/304, 28 S. E. 861.

Legal effect of security deed to land. **Dixon**, 18 A. 47, 88 S. E. 825.

Lessee from grantor in security deed may be summarily dispossessed. **Mattlage**, 106/384, 32 S. E. 940.

Lien of security deed extended to damages awarded by reviewing court, for bringing up case for delay. **Hardy**, 20 A. 529, 93 S. E. 149.

Of materialman, security deed superior to, when. **Bennett Lumber Co.**, 132/491, 64 S. E. 484.

Of recorded security deed, as against lien afterward acquired, how limited in amount. **Troup Co.**, 751, 99 S. E. 541.

Of contractor, security deed subject to, when. *Williams*, 13 A. 42, 78 S. E. 869.

Lots described in security deed, by numbers, not treated as pledged separately, and sheriff's sale of the whole as one tract upheld. *Palmour*, 119/10, 45 S. E. 790.

Marshall assets of decedent, enforcement of security deed, notwithstanding action to. *Royal*, 143/347, 85 S. E. 190.

Maturity of debt, provisions construed as to accelerating, on non-compliance with covenants as to insurance, etc. *Provident Assur. Society*, 124/399, 52 S. E. 289.

Mortgage, equitable, when deed foreclosed as. *Stone*, 101/290, 28 S. E. 840; *Pusser*, 132/280, 64 S. E. 75, 22 L. R. A. (N. S.) 571.

Security deed not enforced as, to collect barred debt. *Story*, 110/65, 35 S. E. 314.

Deed to secure debt differs from. *Loftis*, 139/349, 77 S. E. 169, Ann. Cas. 1914B, 718.

Distinguished from security deed. *Dixon*, 18 A. 47, 88 S. E. 825. See *Hill*, 18 A. 652, 90 S. E. 175; *Harris*, 129/82, 58 S. E. 1038, 12 Ann. Cas. 475.

Security for debt, or retention of title as security, not treated as, even by agreement. *Wynn*, 139/765, 78 S. E. 185.

Lien of, here inferior to security deed. *Missouri Life Ins. Co.*, 147/677, 95 S. E. 244.

Instrument, construed as, and not deed conveying title as security. *Powers*, 7 A. 592, 67 S. E. 685.

Instrument was not, but was security for debt. *Bank of Cedartown*, 146/700, 92 S. E. 213.

Instrument held to be security deed, though designated as a "mortgage." *Troup Co.*, 23 A. 750, 99 S. E. 541.

Instrument construed was not, but was bill of sale, conveying title. *Tremere*, 12 A. 774, 78 S. E. 729.

Bill of sale distinguished from. *Owens*, 13 A. 419, 79 S. E. 225; *Dewit*, 17 A. 666, 87 S. E. 1100.

Clause providing for reconveyance, or for cancellation, on payment of debt, not render instrument a mere mortgage. *Pitts*, 115/281, 41 S. E. 570; *Hill*, 18 A. 652, 90 S. E. 175. Defeasance clause in instrument, otherwise in form of security deed, rendered it a mortgage. *Massillon Engine Co.*, 19 A. 487, 91 S. E. 786.

Effect of, with agreement as to future execution of security deed; no merger of lien. *Lankford*, 21 A. 1, 10, 12, 93 S. E. 499.

Estoppel of grantee to allege that instrument was. *McCandless*, 101/180, 28 S. E. 663.

Allegation that instrument was security deed "or mortgage," construed against pleader. *Baggett*, 126/465, 55 S. E. 250.

Note and security deed construed as parts of same contract; note controls in case of conflict; effect of stipulations advancing maturity of note on default as to interest. *Linam*, 12 A. 735, 78 S. E. 424.

Notice as to debt secured. *Troup Co.*, 23 A. 751, 99 S. E. 541.

Of equities acquired by purchaser, when charged to holder of security deed. *Jordan*, 145/890, 90 S. E. 41.

Parol agreement as affecting character of, as security. *Pierce*, 111/725, 37 S. E. 79; *F. C. & P. R. Co.*, 111/697, 36 S. E. 928.

Security deed converted into absolute conveyance by agreement, cancellation, and taking possession of the property. *English*, 128/730, 58 S. E. 351.

Parol proof that deed was security, when admitted. *Denton*, 120/1078, 48 S. E. 423.

That deed absolute on face was security for debt, admissible, where vendor remains in possession of land; but not otherwise. *Lowe*, 141/380, 81 S. E. 230; *Berry*, 141/642, 81 S. E. 881; *Askew*, 129/325, 58 S. E. 854; *Spencer*, 132/515, 64 S. E. 466; *Farmers Supply Co.*, 23 A. 161 97 S. E. 864; *McNair*, 147/161, 93 S. E. 289.

That deed absolute in form was security for debt to the amount of the

expressed consideration, and for future advances, admissible. *Hester*, 128/533, 58 S. E. 165; *Wiggs*, 147/446, 94 S. E. 556.

Of extension of security to additional indebtedness. *Troup Co.*, 23 A. 751, 99 S. E. 541.

That bill of sale was equitable mortgage, when admissible. *Ellison*, 7 A. 215, 66 S. E. 631.

Parties, necessary, not dispensed with by provision for receiver in security deed. *Johnson*, 142/702, 83 S. E. 656.

Necessary party to proceeding to enforce security for debt. *Strickland*, 141/565, 81 S. E. 836.

Partnership debt afterward assumed by grantor, conveyance as security embraced. *Leffler Co.*, 146/741, 92 S. E. 214.

Penal Code, § 720, as to sale of property after having made "mortgage-deed" to it, security deed treated as "mortgage-deed" under. *Farmer*, 18 A. 307, 89 S. E. 382.

Possession by grantee, under security deed, right of, ceases, when. *Gunter*, 113/18, 38 S. E. 374; *Marshall*, 136/543, 71 S. E. 893.

By maker at date of security deed made prima facie case against claimant, on levy in favor of grantee. *Ford*, 117/211, 43 S. E. 483.

Power of attorney to execute "a mortgage and a lien," no authority to convey title to secure debt. *Farmers Warehouse Co.*, 22 A. 740, 97 S. E. 200.

Power of sale in security deed, exercise of, when not enjoined because grantee is indebted to grantor. *McDaniel*, 109/419, 34 S. E. 589.

Validity of exercise; hours of sale. *Carrington*, 140/799, 80 S. E. 12.

Exercise of, did not constitute ouster or adverse possession. *Southern Title Co.*, 137/478, 73 S. E. 661.

Exercised; no right, after non-compliance with bid and resale of property, to tender amount and demand cancellation. *Carrington*, 144/52, 85 S. E. 1027.

Exercise of, when not restrained on allegation of usury. *Reynolds*, 146/534, 91 S. E. 555.

Venue of petition to enjoin exercise of power. *Meeks*, 117/865, 45 S. E. 252.

Injunction not needed against exercise of, where deed void for usury. *Lanier*, 117/397, 43 S. E. 711.

Exercise of. *King*, 141/63, 80 S. E. 312.

May be exercised without putting title back into grantor, where no defeasance clause, and no bond to reconvey. *Greenfield*, 122/305, 50 S. E. 111.

May be exercised by agent. *Long*, 120/621, 48 S. E. 185.

Pre-existing debt, taker of deed as security for, not protected as purchaser bona fide and without notice of prior unrecorded transfer, on what facts. *Hubert*, 137/70, 72 S. E. 505.

Vendee in deed given as security for, when not treated as purchaser bona fide; and different result on absolute purchase in settlement of such debt. *Harris*, 134/162, 67 S. E. 880.

Not included; security deed was limited to new indebtedness. *American National Bank*, 143/320, 85 S. E. 117.

Prescription, security deed no basis for, when possession not held under it. *Collinsville Co.*, 123/831, 51 S. E. 666.

Provision in note secured as to other notes to which "any excess of security" should be applicable, when applied to prior note. *Washington Exchange Bank*, 149/650, reversing 23 A. 356, 98 S. E. 418.

Recital in registered security-deed referring for description of land to survey and another paper, both unrecorded, sufficiency of, as notice to subsequent purchaser. *Talmadge*, 105/550, 31 S. E. 618.

In receiver's application, that transferee held title as security for debt, when not binding. *Bank of Garfield*, 138/799, 76 S. E. 95.

Reconveyance for levy and sale is mere escrow except for that purpose. *Cole-*

Reconveyance—(Continued).

man, 101/304, 28 S. E. 861. Effect of. **Evans**, 118/882, 45 S. E. 693.

Levy and sale without, void. **Black**, 115/15, 41 S. E. 259. Defective reconveyance for levy. **Austin**, 115/1, 41 S. E. 264.

Levy and sale without, void, but purchaser subrogated to grantee's rights. **Ashley**, 109/653, 35 S. E. 89.

Necessity for, not obviated by decree here. **Ashley**, 109/653, 35 S. E. 89.

Sale before, passes no title. No leviable interest in grantor. **Buchan**, 131/501, 62 S. E. 819.

Sale under execution, before reconveyance to debtor recorded, void. Second sale, where the creditor purchased at the first one, valid. **Culver**, 132/296, 64 S. E. 82.

Need of, before legal levy of execution on judgment of grantee. **Coleman**, 148/757, 98 S. E. 269.

Lien of security deed, as to different debts, not exhausted by placing title in escrow in debtor for purpose of levy and sale in attempt to collect one of them. **McIntire**, 8 A. 803, 70 S. E. 198.

Security for debt, not exhausted by void sale (no deed of reconveyance filed before levy). **Glover**, 130/476, 61 S. E. 12.

Right of debtor's grantee to require, on payment of secured debt. **Fleming**, 120/1023, 48 S. E. 420.

See **Deeds**, 2, catchwords **Levy and Sale**.

Recorded security-deed is notice of grantee's rights. **Mattlage**, 106/834, 32 S. E. 940.

Effect of security deeds to same property, when first one not recorded. **Cooper**, 143/64, 84 S. E. 123.

Redemption of land conveyed by security deed, necessary before levy under other creditor's judgment. **First National Bank**, 146/717, 92 S. E. 69; **Burkhalter**, 122/428, 50 S. E. 144.

Necessity of, by full payment before legal levy by third person. **Smith**, 145/743, 89 S. E. 762.

Stranger has no right of. One having an interest is not a stranger. **Lof-tis**, 139/349, 77 S. E. 169, Ann. Cas.

1914B, 718. Right of, in vendee of debtor. **Id.**

Right of, in creditors. **Shepherd**, 138/555, 75 S. E. 585.

Right of; equities where grantor made subsequent conveyance of timber on the land to one and sold his interest in the land to another. **Williams**, 111/857, 36 S. E. 927.

How and by whom made. **Gould**, 120/57, 47 S. E. 505; **Shumate**, 120/396, 48 S. E. 10.

By heirs of grantor, in possession, where ejectment brought by heirs of grantee. **Doris**, 122/615, 50 S. E. 348.

Right of, where grantee is in possession of the land conveyed; not lost until after ten years from his last recognition of right to redeem. **Gunter**, 113/18, 38 S. E. 374; **Benedict**, 122/412, 50 S. E. 162.

Judgment creditor must pursue statute strictly. **Dodge**, 138/787, 76 S. E. 52.

How accomplished. Equitable ground. **Virginia-Carolina Chemical Co.**, 139/670, 675, 78 S. E. 27.

Reformation, where made to officer to secure debt due corporation. **Greenfield**, 122/305, 50 S. E. 111.

Not decreed, of first security deed at suit of grantee in second. **Garlington**, 146/527, 91 S. E. 553.

Remedies of grantee in security deed may be pursued concurrently. Remedies of his transferee at law and in equity. **Clark**, 122/274, 275, 50 S. E. 108.

Unsecured creditor's remedy adequate at law, not by injunction and receivership. **Dumas**, 147/307, 93 S. E. 894.

Rents and profits, grantee in security deed not entitled to recover, when. **Stevens**, 137/255, 256, 73 S. E. 366.

Liability for. Grantor not in position of a mortgagor at common law. **Stevens**, 124/458, 52 S. E. 762.

Right of cancellation in maker of security deed, where debts paid by. **Coates**, 142/237, 239, 82 S. E. 649.

Repurchase by the grantor, test as to whether conveyance is security deed

where there is contemporaneous agreement for. **Felton**, 109/320, 35 S. E. 175.

Right of maker to convey subject to security deed. **Wilkins**, 113/60, 38 S. E. 374, 88 Am. St. R. 204.

Under security deed as to realty conveyed by it. **Guin**, 6 A. 486, 65 S. E. 330.

Of grantee and grantor under security deed. **Glover**, 130/478, 61 S. E. 12.

Of grantor as against grantee's vendee without notice. **Berry**, 141/642, 81 S. E. 881.

Of other creditor after debt paid. **Gibson**, 130/248; 60 S. E. 565.

Of purchaser of land, who assumes payment, to make tender to creditor. **Loftis**, 139/346, 77 S. E. 169, Ann. Cas. 1914B, 718.

Sale, evidence sufficient to show, and that the deed was not security for debt. **Bunn**, 14 A. 103, 80 S. E. 222.

Effect of, by authority of creditor. **Tucker**, 124/1003, 53 S. E. 504.

Under foreclosure proceeding divested lien for improvements. **Englehart-Hitchcock Co.**, 136/564, 71 S. E. 787.

Whether transaction was, or was securing of debt. **McGarr**, 143/97, 98, 84 S. E. 435.

Whether transaction was, with option to repurchase, or a securing of debt, issue of fact. **Cowart**, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Second deed and third deed as security for debt, how effective. **Owens**, 146/257, 259, 91 S. E. 65.

Was not a mere renewal, but was a different contract. **Jordan**, 145/890, 90 S. E. 41.

Claim under, when preferred to that under earlier mortgage. **Wood**, 142/539, 83 S. E. 183.

On contest between security deeds from common grantor, the one prevailing not held to prevent paying debt to make the other security effectual. **Coleman**, 101/304, 28 S. E. 861.

Status and effect of deed to secure debt.

Could, 120/57, 47 S. E. 505; **Shumate**, 120/396, 48 S. E. 10.

Subrogation of purchaser at void sale to rights of holder of security deed. Ejectment maintainable. **Hamilton**, 126/28, 54 S. E. 926.

Subsequent grantees' rights under equity they bought. **Leffler Co.**, 146/742, 92 S. E. 214.

Tax deed taken by holder of security-deed to the property, rights under. **Bank of University**, 107/247, 33 S. E. 34.

Tenant's deed to secure debt, as declaration of adverse possession. **Willis**, 118/906, 912, 45 S. E. 794.

Title passed by security deed, though no bond to reconvey given; mode of enforcing rights under. **Jewell**, 109/241, 34 S. E. 337.

Placed out of maker. His heirs do not inherit title. **Humphrey**, 142/291, 82 S. E. 885.

Conveyed by security deed, not absolute, but defeasible. **Askew**, 114/801, 40 S. E. 256. Amendment praying for judgment under, where petition treated it as absolute. **Sanford**, 114/1013, 41 S. E. 668.

Passes by security deed. Recovery of land after debt barred. Grantor's possession is permissive, and no basis of prescription. **Doris**, 122/611, 50 S. E. 348.

Divested by security deed; and grantor's lessee not entitled to maintain action for trespass on land conveyed. **Flowers Lumber Co.**, 18 A. 269, 89 S. E. 344.

Passes through borrower of money to pay for land, unaffected by lien of judgment against him. **Protestant Episcopal Church**, 131/666, 63 S. E. 136, 127 Am. St. R. 243.

Transfer of security (bill of sale), carrying title to the property described in the instrument transferred. **Dawson**, 8 A. 585, 69 S. E. 1133.

Of debt and conveyance of security, no breach of bond to reconvey title to debtor. **Anthony**, 21 A. 412, 94 S. E. 634.

Transfer—(Continued).

Of secured note, without recourse, did not discharge land. **Milner**, 148/275, 96 S. E. 566.

Of note secured by bill of sale carried with it the security. **Farmer**, 18 A. 307, 89 S. E. 382.

Of security for debt, effect of. **Cumming**, 118/612, 45 S. E. 479.

Of notes to different persons, effect of; remedy. **Strickland**, 140/654, 79 S. E. 539.

Security for debt paid off by transferee of bond for title, who takes conveyance, mortgagee after transfer defeated. **Rountree**, 120/743, 48 S. E. 132.

Transferee of note secured by deed can obtain special lien, how. **Mad-dox**, 122/671, 50 S. E. 668.

Relative rights of transferee of bond to reconvey and judgment creditors of maker, as to surplus from sale under. **McIntire**, 8 A. 802, 70 S. E. 198.

Security deed as affecting subsequent judgment against maker assigning bond to reconvey. **O'Connor**, 121/88, 48 S. E. 716.

Rights and remedies of assignor passed to assignee of note and deed. **Gillespie**, 145/490, 89 S. E. 519.

Trover by holder of bill of sale taken as security. **Ellison**, 7 A. 214, 66 S. E. 631.

Not prevented by C. C. § 3298, as to foreclosure. **Hill**, 18 A. 652, 90 S. E. 175.

Two deeds securing separate notes and each deed being security for the other note; effect when construed together. **Johnson**, 102/351, 30 S. E. 507.

Usury avoids deed as security for debt. **Lockwood**, 145/243, 88 S. E. 973; **Wiggins**, 145/835, 90 S. E. 56; **Reese**, 146/355, 91 S. E. 120; **First National Bank**, 143/665, 85 S. E. 840; **Wacasio**, 142/113, 82 S. E. 442; **Everett**, 142/145, 82 S. E. 562; **McConnell**, 141/46, 79 S. E. 1128.

Avoidance of deed for. Non-application of rule to deed from grantors of debtor to his creditor. **Long**, 148/170, 96 S. E. 211.

As between borrower and transferee of security did not affect quitclaim deed of transferor. **Pickett**, 147/674, 95 S. E. 253.

Conveyance to secure debt void for, even as to innocent purchaser. **Beach**, 101/359, 28 S. E. 110.

Invalidates title as security for debt, right of grantee's vendee to recover money paid. **Strickland**, 145/218, 88 S. E. 921.

In deed to secure debt, allegation of, when inconsistent with prayer to specifically perform contract in bond for title. **Hand Trading Co.**, 139/156, 158, 76 S. E. 1022.

Security deed attacked for, by one who purchased before suit on. **Cade**, 109/292, 34 S. E. 566.

Wife's approval written on husband's security deed did not estop her from setting up that it was void for. **Cade**, 109/292, 34 S. E. 566.

No attack on security-deed for, by purchaser from grantor pendente lite; aliter as to purchaser before suit. **Swift**, 106/35, 31 S. E. 788; **George**, 106/40, 31 S. E. 790; **Marshall**, 106/42, 31 S. E. 791.

Security void for; plea good though not altogether specific. **Hollis**, 104/318, 31 S. E. 215.

Security for debt, with power of sale, infected with, in loan contract; no title. **Wacasio**, 142/113, 82 S. E. 442.

Title void for; but legal foreclosure for benefit of holder of bonds as collateral security. **Valdosta R. Co.**, 144/761, 87 S. E. 1083.

Avoids security deed and so prevents avoidance of insurance. **Athens Insurance Co.**, 136/585, 71 S. E. 892.

Security deed, when subject to attack for, and when not, by creditor other than him secured. **Miller**, 133/189, 65 S. E. 410.

See C. C. Supp. 1917, §§ 3438, 3438(a). **Wife**, security deed by, for husband's debt, void. **Gross**, 128/79, 57 S. E. 94.

Cancellation of security for debt, by payment of husband's money, vested

title in wife. *Webb*, 124/732, 53 S. E. 247.

Deed as security for debt of others, void in toto. *Central Bank*, 135/231, 69 S. E. 111.

9. SHERIFF'S DEEDS.

Bid, sheriff's deed on his own, as agent for grantee, passed no title. *Coleman*, 101/304, 28 S. E. 861.

Cancellation for excessive levy and fraud, when not obtained. *Hutchinson*, 130/536, 61 S. E. 130.

Color of title. See catchword *Executions*, *Title*; *Deeds*, 2, catchwords *Color of title*

Collusive conduct of parties at sale, when voidable (not void) for. *Borders*, 134/86, 67 S. E. 543.

Execution or judgment, deed inadmissible as conveyance of title when not accompanied by. *Megahee*, 143/738, 85 S. E. 877.

Deed without introducing execution or proving its record, not a muniment of perfect title. *Powell*, 120/36, 47 S. E. 499.

Deed without execution, when admissible. *Cox*, 139/25, 76 S. E. 357.

Illegally amended judgment, deed founded on, conveyed no title. *Thompson*, 122/42, 49 S. E. 751.

Parol evidence of contents of lost execution should accompany sheriff's deed as muniment of title. *Patterson*, 126/478, 55 S. E. 175.

Tax deed inadmissible unless accompanied by execution under which sale was made. *Carr*, 108/757, 33 S. E. 190. Unaccompanied by tax fi. fa., good as color of title. *Peeples*, 140/610, 79 S. E. 466.

Form, irrelevant language in, did not vitiate sale under tax execution. *Canon*, 136/167, 71 S. E. 142, Ann. Cas. 1912C, 39.

Levy and sale void, deed pursuant to, set aside. *Benedict*, 122/412, 50 S. E. 162.

Deed not excluded because entry of, did not recite that tenant in possession was notified of levy. *Keaton*, 136/189, 70 S. E. 1110.

Deed not excluded for alleged uncertainty. *Elwell*, 101/496, 28 S. E. 833.

Name of plaintiff in execution, deed misreciting, when not invalid. *Glover Co.*, 137/684, 73 S. E. 1068, Ann. Cas. 1913B, 191.

Recitals in sheriff's deed, looked to as secondary evidence of contents of lost and unrecorded execution. *Patterson*, 126/479, 55 S. E. 175.

When treated as prima facie true. *Sweeney*, 119/76, 46 S. E. 76, 100 Am. St. R. 159.

Reformation of deed, allegations made no case for. *Wade*, 143/26, 29, 84 S. E. 65.

Tax, deed of wild land sold for, under act of 1874. *Huxford*, 124/187, 52 S. E. 439. Such deed admissible evidence. *Greer*, 104/552, 30 S. E. 943.

Deed not admissible to show title, which fails to follow tax fi. fa. and entry of levy. *Thompson*, 134/80, 67 S. E. 446.

Title, deed under invalid sheriff's sale offered as evidence of (not as color), was not admissible. *Coursey*, 141/65, 80 S. E. 462.

When deed admissible as evidence of, and not merely as color of title. *Sweeney*, 119/76, 46 S. E. 76, 100 Am. St. R. 159.

DEER. See *Criminal Law*.

DEFACING PUBLIC BUILDING. See *Criminal Law*.

DEFAMATION. See *Libel and Slander*.

DE FACTO DOCTRINE. See Corporations; Municipal Corporations; Officers; Sheriffs.

DEFAULT. See City Courts; Damages; Debtor and Creditor; Evidence; Garnishments; Interest; Judgments; Money-rule; Pleading; Roads and Streets.

DEFEASANCE. See Contracts; Deeds; Estates; Mortgages.

DEFENSES. See Actions and Defenses; Pleading.

DEFINITIONS. See Charge to Jury; Criminal Law; Words and Phrases.

DEFORMITY. See Damages.

DEGREES OF CRIME. See Criminal Law.

DEKALB COUNTY. See Counties.
Municipal court of Atlanta in. Constitutionality of act of 1913. *McWilliams*, 142/209, 82 S. E. 569.

DELAY. See Administrators and Executors; Arbitration and Award; Banks; Carriers; Certiorari; Claims; Continuance; Contracts; Damages; Equity, catchword "Laches;" Estoppel; Evidence; Limitation of Actions; Mandamus; New Trials;

Practice in Courts of Review; Railroads, catchword "Delivery;" Sales; Tender.

DELEGATION OF AUTHORITY. See Constitutional Law; Principal and Agent.

DELIVERY. See Assignments; Bailments; Bills and Notes; Carriers; Contracts; Corporations; Deeds; Estoppel; Evidence; Frauds, Statute of; Gifts; Injunctions; Insurance; Landlord and Tenant; Liens; Mortgages; Offices; Pledges; Possession; Railroads; Sales; Telegraphs and Telephones; Title; Trover; Warehousemen.

DELUSION. See Charge to Jury; Insanity.

DEMAND. See Accounts; Actions; Bailments; Banks; Bills and Notes; Bonds; Charge to Jury; Counties; Criminal Law; Damages; Distraint; Interest; Judgments; Juries; Landlord and Tenant; Liens; Limitation of Actions; Mandamus; Municipal Corporations; Nuisance; Payment; Pleading; Principal and Surety; Railroads; Sales; Telegraphs and Telephones; Trials; Trover.

Allegation and evidence not showing. *Elbert County*, 2 A. 51, 58 S. E. 396.

Carrier may require notice of claim for loss or damage; what conduct waives this requirement. *Post*, 138/765, 76 S. E. 45.

Larceny after trust; demand unnecessary. *Goodman*, 2 A. 438, 58 S. E. 558.

Municipal corporation; written notice of intention to sue for injury held not a sufficient presentation of claim. *City of Tallapoosa*, 138/622, 75 S. E. 644.

Penalty for non-delivery of telegraphic message, suit for, in sixty days, a sufficient presentation of claim in writing. *Petty*, 138/314, 75 S. E. 152.

Surety on guardian's bond, when not entitled to, before suit thereon. *U. S. Fidelity Co.*, 2 A. 525, 58 S. E. 777.

Waiver of forfeiture not result from demand for payment after maturity, where payment refused. *Stephenson*, 139/82, 76 S. E. 592.

DEMISE. See Ejectment; Landlord and Tenant.

DEMURRAGE. See Carriers; Railroads; Shipping.

DEMURRER. See Amendments; Appeals; Criminal Law; Equity; Executions; Injunctions; Judgments; Limitation of Actions; New Trials; Parties; Pleading; Practice in Courts of Review.

DENTISTS. See Criminal Law; Parent and Child.

Narcotic drugs, regulation of prescribing. *Stanley*, 135/859, 70 S. E. 591.

Place of business, public; office not so held, under prohibition law. *Cantrell*, 8 A. 725, 70 S. E. 96.

DEPENDENCE. See Criminal Law, catchword "Child;" Parent and Child; Words and Phrases.

DEPOSITIONS. See Affidavits; Charge to Jury; Continuance, catchword

"Interrogatories;" Costs; Deeds; Evidence; Production of Papers.

DEPOSITS. See Bailments; Banks; Building and Loan Associations; Collateral Security; Counties; Factors; Gifts; Innkeepers; Landlord and Tenant; Liquors; Money Rule; Municipal Corporations; Payment; Pledges; Receivers; Sales; Warehousemen.

Lien for funds deposited by school trustees, State has not. *Knight*, 137/537, 73 S. E. 825.

DEPOT. See Railroads.

DEPUTIES. See Clerk of Superior Court; Sheriffs.

DESCENT AND DISTRIBUTION. See Administrators; Estates; Heirs; Title; Wills.

DESCRIPTION. See Actions; Administrators, catchword "Sale;" Amendments; Assignments; Attachments; Boundaries; City Courts;; Condemnation; Constitutional Law; Contracts; Criminal Law;; Dedication; Deeds; Dower; Ejectment; Evidence; Frauds, Statute of; Grants; Headright; Homestead; Insurance; Judgments; Levy and Sale; Liens; Mortgages; Notice; Parties; Pleading; Private Ways; Roads; Sales; Specific Performance; Statutes; Timber; Title; Trover; Trusts; Wills; Year's Support.

DESCRIPTIO PERSONÆ. See Actions; Administrators; Contracts; Deeds; Mortgages; Parties; Principal and Agent.

Addition to name treated as identification, or surplusage; not as indicating official capacity; e. g., administrator, agent, assignee, chairman, executor, president, trustee, etc. *Lester*, 101/675, 29 S. E. 7. See *Woodward*, 138/751, 76 S. E. 49; *McCranie*, 139/794, 77 S. E. 1064, 45 L. R. A. (N. S.) 1073; *Wadley*, 140/326, 78 S. E. 912.

DESERTION. See Criminal Law, catchword "Abandonment;" Divorce.

DETAINDER. See Forcible Entry and Detainer.

DETECTIVES. See Contracts; Criminal Law; Evidence; Municipal Corporations; Witness.

Constitutionality of ordinance making it an offense to carry on business of private detective, except under license and on prescribed regulations. *Lehon*, 16 A. 64, 84 S. E. 608.

DETINUE. See Trover.

DEVASTAVIT. See Administrators and Executors; Guardian and Ward.

DEVISES. See Contracts; Wills; Year's Support.

DILIGENCE. See Bailments; Carriers; Collateral Security; Continuance; Equity; Fraud; Master and Servant; Mining; Negligence; Railroads; Sales; Sheriffs; Trusts.

DIRECTIONS. See Equity; Injunctions; Master and Servant; Practice in Courts of Review; Railroads; Scire Facias; Verdicts.

DIRECTORS. See Banks; Corporations.

DISBARMENT. See Attorneys at Law.

DISCHARGE. See Accord and Satisfaction; Administrators; Bankruptcy; Bills and Notes; Contracts; Criminal Law; Damages; Garnishments; Guardian and Ward; Guaranty; Habeas Corpus; Juries and Jurors; Liens; Master and Servant; Partnership; Payment; Principal and Agent; Principal and Surety; Schools; Settlement; Trover.

DISCLAIMER. See Contracts; Title.

DISCOUNT. See Interest; Usury.

DISCOVERY. See Actions; Equity.

DISCRETION. See Alimony; Amendments; Continuance; Corporations; Costs; Counties; Criminal Law; Habeas Corpus; Injunctions; Judgments; Mandamus; Municipal Corporations; New Trials; Offices and Officers; Ordinary; Parent and Child; Practice; Railroads; Statutes; Taxes; Trials; Venue; Witness.

DISCRIMINATION. See Carriers; Constitutional Law; Railroads; Taxes.

DISEASE. See Insurance; Sales, catchword "Warranty."

DISFRANCHISEMENT. See Constitutional Law, catchword "Vote."

DISMISSAL. See Actions; Appeals; Attachments; Certiorari; Claims; Distrain; Divorce; Equity; Estoppel; Executions; Judgments; Justice's Courts; Levy and Sale; Malicious Prosecution; Mortgages; New Trials; Nonsuit; Pleading; Practice in Courts of Review; Principal and Surety; Removal of Causes; Trover.

DISMISSION. See Administrators and Executors, Guardian and Ward.

DISORDERLY CONDUCT. See Municipal Corporation.

DISORDERLY HOUSE. See Criminal Law; Municipal Corporations.

DISPENSARIES. See Elections, Public; Liquors; Taxes.

Athens; division of profits; authority of ordinary not controlled by court of equity. Clarke County, 113/234, 38 S. E. 852.

Barnesville, dispensary for, not authorized by act authorizing municipality to regulate and control sale of liquors. City of Barnesville, 113/779, 39 S. E. 413.

Debt in operating, without authority of law, refusal to enjoin city from paying. Barnesville, 113/779, 39 S. E. 413.

Local option law did not affect right to establish dispensary under act providing therefor. Butler, 113/238, 38 S. E. 751.

Mitchell County, legality of dispensaries for. Butler, 113/238, 38 S. E. 751.

State institution, dispensary established under local act is. Butler, 113/241, 38 S. E. 751.

DISPOSSESSION. See Damages; Ejectment; Eviction; Evidence; Injunctions; Landlord and Tenant; Trespass.

DISQUALIFICATION. See Administrators and Executors; City Courts; Clerks; Courts; Criminal Law; Elections, Public; Judges; Juries and Jurors; Justices' Courts; Municipal Corporations; Notary Public; Officers; Ordinary; Practice in Courts of Review; Solicitor-general; Taxes; Witness.

Of grand juror. Bexley, 141/1, 80 S. E. 814; Chancey, 141/54, 80 S. E. 287.

Relationship within fourth degree, how computed. Short, 101/287, 28 S. E. 918.

DISSOLUTION. See Corporations; Garnishments; Injunctions; Partnership.

DISTILLING. See Liquors.

DISTRAINT. See **Landlord and tenant.** Administrator, executor, guardian, or trustee, may sue out, individually. Terms indicating representative capacity may be disregarded as surplusage. **Dean, 2 A. 462, 58 S. E. 679.**

Affidavit; formality sufficient. **McCain, 122/842, 51 S. E. 33.**

For warrant amendable by adding jurat. Oath must be actually taken. **Beach, 106/73, 31 S. E. 806, 71 Am. St. R. 239.**

Written and signed, but not sworn to, though handed to justice, no basis for warrant. **Britt, 130/74, 60 S. E. 180.**

Agent can maintain, in his name, where he so rented the land. **Spence, 102/762, 29 S. E. 713.**

Proceeding by one as, by him individually. **Stephens, 122/423, 50 S. E. 119.**

Amendment of counter-affidavit, right of, not lost by giving forthcoming bond and taking possession. **Irvine, 102/539, 31 S. E. 540.**

Striking name of county where land lay, and inserting other county, not allowed. **Summerour, 102/254, 29 S. E. 448.**

Amounts for hire of animals, embraced in rent contract, may be collected. **Sapp, 125/459, 54 S. E. 98.**

Bond for eventual condemnation-money not given, but forthcoming bond accepted and possession surrendered; effect on counter-affidavit. **Irvine, 120/385, 47 S. E. 947; Collins, 128/790, 58 S. E. 446.**

Illegally conditioned, as ground of levying officer's liability for loss. **Hardy, 120/385, 47 S. E. 947.**

City-court judge or clerk can not issue. without express legislative authority. **Woolsey, 1 A. 817, 57 S. E. 1039.**

Counter-affidavit and bond render process mesne; proceeding becomes suit for rent. **Swain, 2 A. 253, 58 S. E. 492.**

Makes warrant mesne process; proceeding becomes suit for rent. **Hardy, 120/385, 47 S. E. 947; Collins, 128/790, 58 S. E. 446.**

Matter of defense. amplifying and and explaining general denial may be stated. **Hawkins, 101/145, 28 S. E. 632.**

Need not state that laying officer retained possession of the property. **Irvine, 102/589, 31 S. E. 540.**

Demand for payment not condition precedent to. **Henley, 124/1059, 53 S. E. 672.**

Dismissal of counter-affidavit takes case from court, and warrant is judgment and execution. **Haines, 1 A. 480, 58 S. E. 220.**

Equitable relief and making additional party, when not competent for defendant to invoke. **Hawkins, 101/145, 28 S. E. 632.**

Against proceeding by. **Brown, 125/833, 54 S. E. 933.**

Action to restrain further progress of distress warrant, was not ancillary but independent. **Withers, 104/89, 30 S. E. 766.**

Estoppel against withdrawal of counter-affidavit, where defendant replevies the property. **Smith, 136/439, 71 S. E. 741.**

Evidence in support of defense stated in counter-affidavit, competency of. **Hawkins, 101/145, 28 S. E. 632.**

Final process, if no counter-affidavit, or on its dismissal. **Withers, 104/100, 30 S. E. 766.**

Heirs can not maintain, on rent note. **Hill, 3 A. 90, 59 S. E. 325.**

Injunction against, and order of interpleader. **Ball, 138/727, 78 S. E. 26.**

Judgment did not conclude question presented by counter-affidavit but only incidentally involved. **Bonds, 133/452, 66 S. E. 156.**

Jurisdiction to issue, and to try issue made by counter-affidavit, in any justice of the peace in county where defendant resides. **Dean, 2 A. 463, 58 S. E. 679.**

To render judgment on bond for condemnation-money, lost by dismissal of counter-affidavit. **Smith, 136/439, 71 S. E. 741.**

Levy can not be made on property already seized under judicial process; but

lien may be asserted on rule to distribute money in officer's hands. **Mulherin**, 1 A. 153, 58 S. E. 60; **Prince**, 1 A. 283, 58 S. E. 61.

Lien of warrant prior to security deed, recorded after levy. **Virginia-Carolina Co.**, 139/674, 78 S. E. 27.

When inferior to mortgage given by corporation tenant, **Garmany**, 124/876, 53 S. E. 669, 110 Am. St. R. 207.

Malicious abuse of process by seizure under. **Mullins**, 122/286, 50 S. E. 101.

Money rule, distress warrant subject to attack on, by holder of contesting claim. **Stewart**, 139/44, 76 S. E. 573.

Note taken for rent, no cause against warrant. **Hilley**, 3 A. 143, 59 S. E. 342.

Payment of rent, plea did not make case of. **Mosley**, 143/181, 84 S. E. 438.

Party, defendant can not bring in another, and pray for equitable relief in his favor. **Hawkins**, 101/145, 28 S. E. 632.

Probable cause for, shown by judgment, though reversed. **Georgia Loan & Co.**, 116/628, 43 S. E. 27.

Promise to pay rent, no basis for, if made to prevent unlawful eviction. **Smith**, 110/650, 36 S. E. 105.

Recoupment of damages against rent, when not allowed. **Henley**, 124/1059, 53 S. E. 672.

Removal of goods by tenant (merchant) his selling in job lots raised no issue for jury as to. **Savannah Bank**, 142/447, 83 S. E. 137.

Rental, and expiration of term; conflict of evidence. **Williams**, 122/295, 50 S. E. 110.

Replevy bond, principal and surety are joint obligors in. *Certiorari* not maintained by surety without joining principal. **Winn**, 3 A. 628, 60 S. E. 328.

Returnable to justice's court, actually returned to superior court, jurisdiction of issue formed by counter-affidavit. **Henley**, 124/1059, 53 S. E. 672.

Returned to court without jurisdiction of person of defendant, may be withdrawn on application, in discretion of

the court, and sent to proper court. **Harrell**, 130/446, 60 S. E. 1042.

To "next term of the court," not void. **Beach**, 106/73, 31 S. E. 806, 71 Am. St. R. 239.

Right of, did not exist under facts. **Culpepper**, 142/164, 82 S. E. 549.

Security for debt, that deed was given as, an issue for trial. **Bonds**, 133/452, 66 S. E. 156. See **Bashinski**, 133/39, 65 S. E. 152.

Seizure of tenant's crop after levy thereon, by officer; liability for. **Prince**, 1 A. 283, 58 S. E. 61.

Set off, when items apparently independent of rent contract can not be, against warrant. **Mosley**, 143/181, 84 S. E. 438.

Special matters of defense alleged in counter-affidavit, amplifying and explaining denial indebtedness. **Hawkins**, 101/145, 28 S. E. 632.

Trial of issue, in city court, at first term after counter-affidavit filed. **Davis**, 148/765, 98 S. E. 338.

Use of another, may be sued out for. **Joiner**, 106/258, 32 S. E. 90.

Verdict or judgment, form of, where counter-affidavit filed. **Hardy**, 120/385, 47 S. E. 947.

DISTRIBUTION. See **Administrators and Executors**; **Money Rule**.

DISTRIBUTIONS, STATUTE OF. See **Administrators**; **Heirs**.

Intestacy, statute governs in case of. **Lane**, 138/710, 711, 76 S. E. 47.

Per capita, not per stirpes. **Duke**, 138/172, 75 S. E. 1.

DISTURBANCE OF THE PEACE. See **Municipal Corporations**.

DISTURBING SCHOOL OR WORSHIP. See **Criminal Law**.

DIVE KEEPING. See **Municipal Corporations.**

DIVERSE CITIZENSHIP. See **Removal of Causes.**

DIVIDENDS. See **Banks; Corporations; Insurance; Stocks and Stockholders.**

DIVISION. See **Administrators; Partition.**

DIVORCE. See **Alimony; Criminal Law; Evidence; Husband and Wife; Parent and Child.**

Adultery and fornication, reasonable specification of times and places of, required in pleading. **Lemon, 141/450, 81 S. E. 118.**

As ground of; disqualification of party as a witness. **Anderson, 140/802, 79 S. E. 1124.**

Incompetency of party as witness touching. **Arnold, 141/158, 80 S. E. 652.**

Of wife, incompetency of husband as witness to prove. **Chandler, 145/32, 88 S. E. 561; Stodghill, 145/101, 88 S. E. 676.**

Alimony incidental to divorce suit, denied by grant of nonsuit. **Stoner, 134/369, 67 S. E. 1030.**

In proceeding for. **Whitehead, 143/285, 84 S. E. 580.**

Judgment for, written after verdict and decree of divorce, related to prior hearing, and was not void. **Phillips, 146/61, 90 S. E. 379.**

Not necessarily barred where husband obtains divorce for desertion. **Davis, 134/804, 68 S. E. 594, 30 L. R. A. (N. S.) 73, 20 Ann. Cas. 20.**

Payments enforced after decree by attachment for contempt. **Gorham, 147/433, 94 S. E. 555; see Woodall, 147/676, 95 S. E. 233.**

Prostitution and intoxication, when no ground for refusing. **Kendrick, 105/38, 31 S. E. 115.**

Writ of error. No fast writ on order upon petition to enforce by attachment. **Gordon, 109/262, 34 S. E. 324.**

Amendment adding distinct ground for, not allowed, though on same facts. **Ring, 112/854, 38 S. E. 330.**

Adding ground of cruelty to petition on ground of desertion, allowable. **Zachry, 141/404, 81 S. E. 120.**

Of decree in other State, no jurisdiction as to, both parties having taken residence in Georgia. **Milner, 143/819, 85 S. E. 1045, L. R. A. 1916B. 977.**

Children, action for support of, where not determined by decree or contract. **Hall, 141/361, 80 S. E. 992. See Jones, 141/523, 81 S. E. 441.**

Support for child not provided for in decree, action thereafter lies against husband for money expended by divorced wife on this account. **Brown, 132/712, 64 S. E. 1092, 131 Am. St. R. 229.**

Collateral attack of decree for fraud, generally not allowed. **Hood, 143/616, 85 S. E. 849; Milner, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977. Exception to rule. Ib.**

Of decree, not allowed by way of caveat to application of year's support. **Hood, 143/616, 85 S. E. 849.**

On verdict and decree, when not allowed on grounds that could have been set up in defense. **McLeod, 144/359, 87 S. E. 286.**

Condonation by cohabitation after first verdict, a reason for denying second verdict; not available for collateral attack. **McLeod, 144/359, 87 S. E. 286.**

Of misconduct, evidence showing. **Kendrick, 105/38, 31 S. E. 115.**

By cohabitation after knowledge of fraud. **Stanley, 115/990, 42 S. E. 374.**

Of cruelty by later cohabitation. **Brown**, 129/246, 58 S. E. 825. Condoned acts of cruelty, not revived by selling property and preparing to leave wife unprovided for. **Stoner**, 134/369, 67 S. E. 1030. No defense against divorce for desertion, unless later misconduct revive them. **Davis**, 134/804, 68 S. E. 594, 30 L. R. A. (N. S.) 73, 20 Ann. Cas. 20.

Contempt by violating interlocutory injunction. **Smith**, 146/83, 90 S. E. 711.

Conveyance pending suit; effect as against judgment for alimony. **Russell**, 103/310, 30 S. E. 37.

Conviction of crime as ground; offense involving moral turpitude; pardon not effective to prevent divorce. **Holloway**, 126/459, 55 S. E. 191, 7 L. R. A. (N. S.) 272, 115 Am. St. R. 102, 7 Ann. Cas. 1164.

Of offense involving moral turpitude, followed by sentence, gives right to; and this not affected by executive pardon. **Wood**, 135/386, 69 S. E. 549.

Cruelty and intoxication as grounds; competency of party as a witness. **Anderson**, 140/802, 79 S. E. 1124.

Allegations sufficient as to, on general demurrer. **Pierce**, 145/886, 89 S. E. 1045.

Admissibility of testimony. **Anglin**, 145/822, 90 S. E. 73.

Defined. **England**, 148/159, 96 S. E. 174.

Defined. Charging wife with incestuous adultery, effect of. **Miller**, 139/282, 77 S. E. 21.

Defined. Humiliating mentally, and painful results of misconduct, held not cruelty. **Ring**, 118/183, 44 S. E. 861, 62 L. R. A. 878; **Smith**, 119/239, 46 S. E. 106.

Defined. Petulance, rudeness, and sallies of passion held not to be such. **Stoner**, 134/368, 67 S. E. 1030. Partial divorce may be granted. **Pedrick**, 134/662, 68 S. E. 515. As defense to action. **Davis**, 134/804, 68 S. E. 594, 30 L. R. A. (N. S.) 73, 20 Ann. Cas. 20.

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Discretion of jury to grant total or partial divorce. **Camp**, 141/407, 81 S. E. 128.

Evidence held sufficient to support verdict. **Ford**, 146/167, 91 S. E. 42.

Verdict not supported by evidence here. **Cureton**, 131/745, 65 S. E. 65.

By circulating slander. **Ray**, 106/263, 32 S. E. 156.

Competency of party as witness touching. **Arnold**, 141/158, 80 S. E. 652.

Not shown by bringing suit on debt, and, after separation, for alimony, and obtaining judgment. **Pinnebad**, 134/496, 68 S. E. 73.

Not shown by declining to cohabit. **Pinnebad**, 134/496, 68 S. E. 73.

True charge of infidelity is not. **Fuller**, 108/256, 33 S. E. 865.

Custody of child awarded to father; mother then procured letters of guardianship; effect on order to pay money for child's support, etc. **Waldron**, 138/788, 76 S. E. 348.

Conclusiveness of decree as to, not for all time. Effect of changing domicile. **Milner**, 139/109, 110, 76 S. E. 860.

Decree as to, when not conclusive adjudication. **Matthews**, 139/123, 76 S. E. 855.

Decree awarding, prima facie evidence of legal right; not conclusive in changed conditions. **Milner**, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977; **Barlow**, 141/535, 81 S. E. 433, 52 L. R. A. (N. S.) 683.

Discretion not abused in award of. **Ellis**, 132/357, 63 S. E. 1102. Agreement as to, in consideration of withdrawing objections, binding. **Brown**, 132/712, 719, 64 S. E. 1092, 131 Am. St. R. 229. Duty of court, not of jury, to award. **Cureton**, 132/745, 65 S. E. 65. Awarded by judge, not jury. Exception is to decree directly, not by motion for new trial. **Johnson**, 131/606, 62 S. E. 1044.

Issue on habeas corpus as to, on matters transpiring since decree. **Matthews**, 139/123, 76 S. E. 855.

Pendente lite, awarded in discretion of court, unhampered by judgment in habeas corpus. **Zachry**, 140/479, 79 S. E. 115.

Decree by consent, no power to revise, not afterwards opened and modified. **Coffee**, 101/787, 28 S. E. 977.

Entry of, after two concurrent verdicts, not indispensable to dissolve marriage. **Rorie**, 132/723, 64 S. E. 1070.

A vinculo, in other State, on constructive and not actual service, not entitled to obligatory enforcement here; but recognized on ground of comity. When prevails as defense to proceeding for alimony. **Joyner**, 131/217, 62 S. E. 182, 18 L. R. A. (N. S.) 647, 127 Am. St. R. 220.

How pleaded in bar. **Crumbley**, 136/724, 70 S. E. 655.

On single verdict, void for want of jurisdiction. **Cale**, 135/185, 68 S. E. 1101.

Of other State, as basis for recovery of instalments of alimony in this State. Not void because child of the marriage resided here. **Schroeder**, 144/119, 86 S. E. 224.

Of other State, on constructive service, not entitled to obligatory enforcement here; but when recognized by comity. **Crumbley**, 135/724, 728, 70 S. E. 655.

Terminates matrimonial relation. **Hall**, 141/361, 80 S. E. 992.

See catchword "Foreign," *infra*.

Deed of husband to wife, in settlement of suit, effect of; and rights and remedies thereunder. **Lemon**, 141/448, 81 S. E. 118.

Defense of wife's immoral conduct not sustained by evidence of her general reputation. **Bishop**, 124/293, 52 S. E. 742.

Desertion as cause for; and condoned acts not set up as defense. **Davis**, 134/804, 68 S. E. 594, 30 L. R. A. (N. S.) 873, 20 Ann. Cas. 20.

As ground for (considering refusal to cohabit as such) must continue three years. **Pinnebad**, 134/496, 68 S. E. 73.

Evidence and charge to jury considered. **McCord**, 140/170, 171, 78 S. E. 833.

Met by charge of cruelty. **Rorie**, 132/719, 64 S. E. 1070.

Wilful, relevancy of testimony tending to negative, relating to insanity, etc. **Siniard**, 145/541, 89 S. E. 517. Evidence did not show. **Williams**, 145/799, 89 S. E. 836.

Disabilities of defendant not referred to in verdict, when no cause for new trial. **Miller**, 139/282, 77 S. E. 21.

Discretion of jury as to partial or total divorce. **Wolf**, 121/113, 48 S. E. 691; **Anglin**, 145/822, 90 S. E. 73.

In granting allowance. **Heaton**, 102/578, 27 S. E. 677.

Not abused, conflicting evidence. **Stinson**, 131/488, 62 S. E. 579; **Aikea**, 131/578, 62 S. E. 820; **Hill**, 131/657, 62 S. E. 1031.

Dismissal by court ex mero motu, for want of jurisdiction of person of defendant. **Watts**, 130/683, 61 S. E. 593, 20 L. R. A. (N. S.) 354.

Domicile of wife suing for, not acquired until one year's residence; though she formerly had, but lost, a domicile here. **Lamont**, 134/523, 68 S. E. 96.

Wife may acquire separate, to confer jurisdiction in proceeding for divorce or separation. **Pearlstine**, 148/756, 98 S. E. 264.

Out of county, when too late to set aside verdicts and decree on ground of. **McConnell**, 135/828, 70 S. E. 647.

Equitable petition to annul marriage, not retained as libel for divorce. **Griffin**, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 14 Ann. Cas. 866.

Equitable relief obtainable by amending prayers. **Wells**, 118/812, 44 S. E. 861, 62 L. R. A. 878.

Estoppel by decree of, none as to truth of grounds, in contest with stranger in other suit. **Luke**, 137/161, 73 S. E. 345, 38 L. R. A. (N. S.) 559.

Evidence illustrative of conduct; what admissible and what not. **Anglin**, 145/822, 90 S. E. 73.

Self-serving declarations in letters, not admissible; aliter as to request of wife for husband not to see her. *McCord*, 140/170, 171, 78 S. E. 833.

Exception to first verdict, not pendente lite, but directly to Supreme Court, is not premature. *Rorie*, 132/719, 64 S. E. 1070.

False statements and misconduct before marriage, when no ground. *Stanley*, 115/990, 42 S. E. 374.

Foreign decree of, how far conclusive. Want of jurisdiction to reform, where other domicile aquired. *Milner*, 139/109, 76 S. E. 860.

When not enforced; and when recognized on ground of comity. *Matthews*, 139/125, 76 S. E. 855.

On substituted service, without extra-territorial effect; recognition by comity not a universal rule. *Neely*, 145/365, 89 S. E. 325, L. R. A. 1916E, 819.

Fraud as ground for setting aside decree; and motion not barred by limitation. *Gwinn*, 145/481, 89 S. E. 574.

In setting up false ground for, as cause to cancel decree; petition was subject to demurrer. *Conklin*, 148/640, 98 S. E. 221.

In obtaining conveyance on agreement to marry, when no defense against attachment for contempt. *Smith*, 146/83, 90 S. E. 711.

Full faith and credit to decrees of other States, want of application of provision touching. *Matthews*, 139/123, 76 S. E. 855; *Milner*, 139/113, 76 S. E. 860.

Grounds, judge's duty as to legality of, and as to proof. *Brown*, 129/246, 58 S. E. 825.

In accordance with recognized principles underlying marriage, not covered by local statute, upholds decree of other State. *Joyner*, 131/218, 62 S. E. 182, 18 L. R. A. (N. S.) 647, 127 Am. St. R. 220.

Historical references; English and Georgia law. *Davis*, 134/806, 68 S. E. 594, 30 L. R. A. (N. S.) 73, 20 Ann. Cas. 20.

Homestead property, wife's interest in, was terminated by decree. *Shivers*, 135/364, 69 S. E. 491.

Injunction against divorced husband's annoying and vexatious conduct, allegations made no case for. *Hall*, 141/362, 80 S. E. 992. *Contra*, *Lemon*, 141/448, 449, 81 S. E. 118.

Not granted, on petition of libellant, against his wife and the ordinary, to stop habeas corpus proceeding. *Hood*, 132/778, 64 S. E. 1074.

Pending libel, to stop husband from interfering with wife's property or occupying her dwelling. *Lyon*, 102/453, 31 S. E. 34, 42 L. R. A. 194, 66 Am. St. R. 189.

In rem, or in personam, proceeding as. *Joyner*, 131/220, 223, 62 S. E. 182, 18 L. R. A. (N. S.) 647, 127 Am. St. R. 220.

Instructions to jury on issues for their determination. *Anglin*, 145/822, 90 S. E. 73.

Intoxication, habit of, without constant and continuous drunkenness. *Fuller*, 108/256, 33 S. E. 865.

Habitual, as ground for, is drunkenness from alcohol, not opium or other drug. *Ring*, 112/854, 38 S. E. 330.

Judgment or decree purporting to create special lien, dormancy of, not prevented. *Landis*, 146/606, 91 S. E. 688.

Jurisdiction, issue of fact as to residence. *Smith*, 136/197, 71 S. E. 158.

Not conferred by acknowledgment of service and consent to trial in county of plaintiff's residence. *Watts*, 130/683, 61 S. E. 593, 20 L. R. A. (N. S.) 594.

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Of person and subject-matter in. Decree open to attack for want of. *Joyner*, 131/220, 224, 62 S. E. 182, 18 L. R. A. (N. S.) 647, 127 Am. St. R. 220.

Recognized, verdicts and decree not afterward set aside for want of the same. *McConnell*, 135/828, 70 S. E. 647.

- Waiver no basis for proceeding in county not of defendant's residence. Yet libellant estopped to assert want of jurisdiction, in defense to application for alimony. *Odum*, 132/439, 64 S. E. 470.
- Martial tie dissolved by decree on two concurrent verdicts.** *Phillips*, 146/62, 90 S. E. 379.
- Marriage, allegation of, by male of fifteen years, referred to ceremony; no admission of lawful marriage.** *Morgan*, 148/625, 97 S. E. 675.
- Misconduct like that alleged may defeat; no issue of justification.** *Fuller*, 108/256, 33 S. E. 865.
- New trial, grant of, not reversed, where verdict not demanded by the evidence.** *Camp*, 141/407, 81 S. E. 128.
- Nonsuit in libel for, affirmed.** *Williams*, 145/799, 89 S. E. 836.
- Notice of pending suit did not prevent purchase bona fide.** *Russell*, 103/310, 30 S. E. 37.
- Pleading not showing ground, nature of service, or jurisdiction of parties, demurrable.** *Crumbley*, 135/724, 728, 70 S. E. 655.
- Privilege, right to exclude communication on ground of, how waived by giving testimony.** *McCord*, 140/170, 171, 78 S. E. 833.
- Proceedings in action for, differ from actions and defenses in contract or tort.** *Rorie*, 132/722, 64 S. E. 1070.
- Proof insufficient to show: declarations and incompetent record.** *Wilson*, 108/275, 33 S. E. 975.
- Property disposal on total divorce; and effect of previous deed of gift.** *Evans*, 118/892, 45 S. E. 612, 98 Am. St. R. 180.
- Res judicata, questions involved in order were not.** *Sumner*, 121/1, 48 S. E. 727.
- Schedule, need of including property in, to bind purchaser pendente lite.** *Russell*, 103/310, 30 S. E. 37.
- Of property not attached to petition, no ground to dismiss case at trial term. *McCord*, 140/170, 171, 78 S. E. 833.
- Service by publication, effect of. Does not give jurisdiction to render judgment in personam for alimony.** *Hood*, 130/610, 613, 61 S. E. 471, 19 L. R. A. (N. S.) 193, 14 Ann. Cas. 359.
- By publication without actual notice, decree of other State based on, not conclusive. *Matthews*, 139/123, 76 S. E. 855.
- Constructive, without actual notice, lays decree open to collateral attack for fraud. *Solomon*, 140/379, 78 S. E. 1079.
- Of action, where defendant absent from the State. *Stallings*, 127/464, 56 S. E. 469, 9 L. R. A. (N. S.) 539.
- Of proceeding for; what required. *Joyner*, 131/223, 62 S. E. 182, 18 L. R. A. (N. S.) 647, 127 Am. St. R. 220.
- Slander, evidence of circulating, admissible.** *Ray*, 106/260, 32 S. E. 156.
- Support (other than as fixed in decree) and inheritance, rights of, lost by wife; not so as to child.** *Brown*, 132/714, 64 S. E. 1092, 131 Am. St. R. 229.
- Of children after decree of, where not provided for; what action would lie. *Smith*, 136/533, 71 S. E. 869.
- Total and partial; proper to explain difference to jury.** *Zachary*, 141/404, 81 S. E. 120.
- Transfer of property by husband bona fide and for value, before suit commenced, not restricted; aliter as to transfer pending suit.** *Singleton*, 130/716, 61 S. E. 722.
- Venue of suit for, in county of defendant's residence, where the parties reside in different counties.** *Watts*, 130/683, 61 S. E. 593, 20 L. R. A. (N. S.) 354.
- Where defendant was imprisoned in other county. *McLeod*, 144/359, 87 S. E. 286.
- Verdict or judgment, none by default.** *McConnell*, 135/830, 70 S. E. 647.
- Directed by court, set aside, where respondent testified that desertion was necessitated by cruelty specified. Query: can court legally direct verdict in any case? *Rorie*, 132/719, 64 S. E. 1070.
- First for plaintiff; second prevented by nonsuit for want of prima facie

case; judgment affirmed. *Stoner*, 134/369, 67 S. E. 1030. So where first verdict granted total, second partial divorce. *Pedrick*, 134/662, 68 S. E. 515.

Inconsistent, on libel and cross-libel. *Anthony*, 103/250, 29 S. E. 923.

Witness, husband incompetent, as to adultery of wife. *Bishop*, 124/293, 52 S. E. 743.

DOCKETS. See Actions; Court of Appeals; Evidence; Executions; Judgments; Justices' Courts; Liquors; Practice in Courts of Review; Service.

DOCUMENTS. See Evidence.

DOGS. See Criminal Law; Damages; Evidence; Municipal Corporations; Railroads; Trover.

Cruelty to animals; statute not violated by owner of dog (or another with his consent) killing it in a swift, comparatively painless manner. *Miller*, 5 463, 63 S. E. 571. When not violated by owner of sheep, who kills sheep-killing dog of another. *Ib.*

Damages recoverable by owner of dog wantonly and maliciously killed by railroad-train. *S. A. L. Ry.*, 16 A. 254, 85 S. E. 200; *Southern Ry. Co.*, 7 A. 244, 66 S. E. 627.

Recoverable by owner of dog wantonly and maliciously killed by the running of a street-car. *Columbus R. Co.*, 128/631, 58 S. E. 152, 10 L. R. A. (N. S.) 1136, 119 Am. St. R. 404.

Decisions, review of. *Strong*, 118/515, 45 S. E. 366.

Domestic animals, dogs are, under constitution and Penal Code. *Wilcox*, 101/563, 28 S. E. 981, 39 L. R. A. 709.

Liability for injury by, after notice of dangerous or vicious propensity. *Friedman*, 124/532, 52 S. E. 892.

Municipal police power; badge and registration fee. *Griggs*, 103/602, 30 S. E. 561, 68 Am. St. R. 134.

Negligence, in killing, not alleged, action dismissed on demurrer. *Martin*, 7 A. 324, 66 S. E. 803. Negligent killing, no cause of action. *Strong*, 118/515, 45 S. E. 366.

Nuisance killing dogs as. *Miller*, 5 A. 463, 63 S. E. 571.

Property, dog is, under tax of 1912. *S. A. L. Ry.* 19 A. 627, 91 S. E. 1053.

Status as, discussed. *Columbus R. Co.*, 128/631, 58 S. E. 152, 10 L. R. A. (N. S.) 1136, 119 Am. St. R. 404; *Strong*, 118/515, 45 S. E. 366.

Status of dogs as; whether damages may be recovered for a merely negligent killing of a dog, since the act of 1912, declaring that "all dogs are hereby made personal property and shall be . . . taxed," etc., not decided. *S. A. L. Ry.* 16 A. 254, 85 S. E. 200.

Subject to levy and sale, dogs are. *Vaughan*, 5 A. 105, 62 S. E. 708.

Trover, successful defense to action of. *Knox*, 119/689, 46 S. E. 868.

Value of, how proved. *Columbus R. Co.*, 128/631, 58 S. E. 152, 10 L. R. A. (N. S.) 1136, 119 Am. St. R. 404.

DOMESTIC RELATIONS. See Husband and Wife; Parent and Child.

DOMICILE. See Attachments; Corporations; Divorce; Guardian and Ward; Husband and Wife; Jurisdiction; Juries and Jurors; Words and Phrases.

Change not effected by temporary removal for schooling of children. *Peacock*, 110/281, 34 S. E. 611.

Evidence ample to show; but error to direct verdict where evidence conflicts. *Ruff*, 141/805, 82 S. E. 250.

Evidence on issue of fact authorized finding against defendant's plea.

Brandt, 147/390, 94 S. E. 233; **Tillman**, 147/391, 94 S. E. 234.

How effected. **Worsham**, 144/707, 87 S. E. 1025.

Intention as to; evidence and charge considered. **Whedon**, 112/642, 37 S. E. 972; **Knight**, 112/828, 38 S. E. 206.

Made by going with family to other county to perform a contract, intending temporary residence there. So as to man with no family **Knight**, 112/828, 38 S. E. 206.

Not effected by minor doing business in different county with father's consent. **Jackson**, 146/453, 91 S. E. 481.

Not shown here. **Dasher**, 113/3, 38 S. E. 348.

When not effected by removal of family and effects. **Milligan**, 126/15, 54 S. E. 915.

Charge to jury, evidence, and statute considered. **Smith**, 136/197, 71 S. E. 158.

Determined by act and intention. **Redfearn**, 123/392, 51 S. E. 407.

Evidence not pertinent on issue as to. **Worsham**, 144/707, 87 S. E. 1025.

On issue as to; and as to intention to change. **Smith**, 136/197, 71 S. E. 158.

In county of venue, where residence claimed; though dwelling-house stood across the county line. **Chancey**, 141/54, 80 S. E. 287.

Injunction in favor of citizen against certification of result of illegal election which would change his domicile by changing a political division. **Town of Roswell**, 128/43, 57 S. E. 114.

Intent necessary to change of. **Bush**, 10 A. 546, 73 S. E. 697. Statement of intention, admissible in evidence. **Flemister Grocery Co.**, 10 A. 702, 73 S. E. 1077.

Issue of fact as to. **Forlaw**, 124/261, 52 S. E. 898.

Minor child; how domicile fixed. **Hayslip**, 123/265, 51 S. E. 325.

Non-residence not result from mere casual or temporary absence from State on business or pleasure. **Flemister Grocery Co.**, 10 A. 702, 73 S. E. 1077.

Officer's change of, when to be judicially ascertained. **Bush**, 10 A. 546, 73 S. E. 697.

Power of General Assembly in fixing, as to persons natural and artificial. **Central Georgia Power Co.**, 141/181, 80 S. E. 636.

Residence and domicile not synonymous and convertible terms. **Worsham**, 144/707, 87 S. E. 1025.

Defined and distinguished from "domicile". **Farmer**, 12 A. 732, 734, 78 S. E. 353.

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Tax returns as to personality, made in a certain county, a circumstance tending to show claim of domicile in that county. **Ruff**, 17 A. 338, 86 S. E. 784.

Transient defendant, residence of, for suit. **Crawford**, 142/734, 83 S. E. 667.

Wife may acquire separate, to confer jurisdiction of proceeding for divorce or separation. **Pearlstone**, 148/756, 98 S. E. 264.

DONATIO CAUSA MORTIS. See **Gifts**.

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DOVE SHOOTING. See **Criminal Law**.

DOWER.

Administrator individually not a party or privy to proceeding. *Whitehead*, 127/774, 56 S. E. 1004.

Administration not stale where dower estate not terminated. *McCranie*, 139/792, 77 S. E. 1064, 45 L. R. A. (N. S.) 1073.

Affidavit of commissioners not shown by record, when no cause to vacate judgment assigning. *Cook*, 138/88, 89, 74 S. E. 795.

Age of widow considered in estimating. *Johnson*, 102/354, 30 S. E. 507.

Agreement of family to divide land conveyed to widow an estate for life in lieu of. *Allen*, 139/648, 77 S. E. 1054.

Of widow and other heirs as to taking property in lieu of; evidence conflicting, injunction granted against assignment. *Kimbrell*, 135/508, 69 S. E. 742.

Alimony permanent, as bar. *Harris*, 115/950, 42 S. E. 266.

Appointment of commissioners by judge sitting out of circuit, when no ground to vacate judgment assigning. *Cook*, 138/88, 89, 74 S. E. 795.

Barred by conveyance to secure debt. Effect of payment. *Harris*, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475.

By conveyance to secure debt partly unpaid. *McDonald*, 120/405, 47 S. E. 918.

Bond for title, assignment of land held under. *Spence*, 137/514, 73 S. E. 739.

Code sections construed. Status at death of husband, how fixed. *Connelly*, 141/112, 80 S. E. 553.

Contract to promote dissolution of marriage did not bar right. *Birch*, 109/349, 34 S. E. 561, 77 Am. St. R. 379.

Conveyance of land by decedent to children of former marriage prevented assignment of. *Pruett*, 136/756, 72 S. E. 30.

Cotenant's improvement, not assignable additionally to dower in his share of whole land. *Helmken*, 138/457, 75 S. E. 586, 45 L. R. A. (N. S.) 738.

Creditors may contest assignment. *Harris*, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475.

Debt secured by conveyance of deceased husband (with bond to reconvey), and interest paid by administrator; widow could not obtain dower. *Connelly*, 141/112, 80 S. E. 553.

Defined; effect of taking. *Cole*, 135/19, 68 S. E. 784.

Description of land assigned sufficient; attached plat considered as part of return. *Sears*, 133/422, 65 S. E. 886.

Of land must be definite, to bind third persons. *Luttrell*, 121/699, 49 S. E. 691.

When exception was of the interest or life-estate, not the land set apart. *Hawkins*, 131/847, 62 S. E. 285.

Disability, no bar before seven years after removal of. *LaGrange Mills*, 121/435, 49 S. E. 300.

Divorce as ground of objection; general allegation demurrable. *Crumbley*, 135/724, 70 S. E. 655.

Election between dower and child's part not required, where husband leaves no lineal descendant. *Anderson*, 147/138, 93 S. E. 93.

To take child's part bars. Effects of joining in suit brought by heirs. *Smith*, 141/629, 81 S. E. 895.

By widow not required. *LaGrange Mills*, 121/429, 49 S. E. 300.

Of child's part instead of, how shown. *Culpepper*, 139/667, 77 S. E. 1058.

Of child's part of realty not made in one year, widow remitted to right of dower. *Hanvy*, 140/692, 79 S. E. 772. Widow failing in twelve months to take child's part (or one fifth), is remitted to right of dower. If that become barred, she has no leviable interest. *Farmers Co.*, 112/301, 37 S. E. 447.

Of dower, or claim of year's support, when not to be forced before decision whether land is part of deceased husband's estate. *MaNair*, 139/71, 74, 76 S. E. 575.

To take, bars further interest in realty, but not claim of child's part in personalty. *Cole*, 135/19, 68 S. E. 784.

To take child's part in lieu of, did

- not entitle widow to take half of the realty, in fee simple, regardless of the will. **Falligant**, 133/87, 65 S. E. 149.
- To take child's part in lieu of, inferred from dealing with an interest in the estate as if absolute owner, though, by mistake, less than a child's part was claimed. **Rountree**, 128/737, 58 S. E. 346.
- Equity of redemption**, not set apart as. **Harris**, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475.
- Bar to equitable action for, after seven years from death. **Crawford**, 118/631, 45 S. E. 482.
- Jurisdiction as to assigning. **Bishop**, 103/281, 29 S. E. 968.
- Widow not dowerable in equitable charge; but in land to which husband had title or perfect equity. **Helmken**, 138/457, 75 S. E. 586, 45 L. R. A. (N. S.) 738.
- Estoppel** to claim, did not result by consent to sale by administrator. **Starr**, 107/395, 33 S. E. 427.
- Exception** in conveyance, of "widow's dower which is assigned," how effective. **Ellis**, 147/316, 93 S. E. 895.
- Forfeiture** for waste by tenant in. **Roby**, 121/679, 49 S. E. 694, 68 L. R. A. 601.
- Fraud** or collusion authorizing attack by creditors, when not shown by administrator's non-objection to return. **Harris**, 137/113, 72 S. E. 947.
- Gross sum** taken in lieu of; proper allotment, how estimated. **Johnson**, 102/354, 30 S. E. 507.
- Homestead** estate; widow who is sole beneficiary of, can take dower therefrom, destroying homestead right. **Cook**, 138/88, 74 S. E. 795.
- Impounding** of money for use of land; demurrable petition by next friend and prospective heir insane doweress. **Crenshaw**, 127/742, 57 S. E. 57.
- Improvements** by heir or alienee, widow not dowerable in. **LaGrange Mills**, 121/435, 49 S. E. 300.
- Insane** widow's right. **LaGrange Mills**, 121/435, 49 S. E. 300.
- Interest** or rents and profits from death of husband to receipt of cash or land. **Johnson**, 102/354, 30 S. E. 507.
- Judgment** assigning, binds creditors without notice, where no fraud or collusion. **Harris**, 137/113, 72 S. E. 947.
- Levy and sale** covered reversion in land set apart as. **Hawkins**, 131/355, 62 S. E. 285.
- Purchaser under, was entitled to land set apart as, after widow's death. **Fletcher**, 135/28, 68 S. E. 793; **Ogle-tree**, 135/34, 68 S. E. 789.
- Mortgage** may be postponed to. **Pusser**, 132/282, 64 S. E. 75, 22 L. R. A. (N. S.) 571.
- Value diminished by lawful taking of. **Bellerby**, 105/477, 30 S. E. 425.
- Nature** and origin of this right. **Harris**, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475.
- Objections** to application for; allegations demurrable as irrelevant should be stricken. **Crumbley**, 135/724, 70 S. E. 655.
- Withdrawn by creditor, not allowed to administrator. **McDonald**, 120/405, 47 S. E. 918.
- Order** of court not essential; land admeasured and possession taken, all acquiescing. **Callaway**, 123/344, 51 S. E. 477.
- Parol** evidence of unrecorded return and judgment was not admissible in collateral proceeding. **Wood**, 145/256, 88 S. E. 980.
- Parties** to equitable assignment. **Bishop**, 103/281, 29 S. E. 968.
- Partition** between cotenants need not precede setting apart of. **Helmken**, 138/457, 75 S. E. 586, 45 L. R. A. (N. S.) 738.
- Partnership** realty not subject to, before debts paid. **Ferris**, 110/102, 35 S. E. 347.
- Possession** adverse, not shown by return and judgment setting apart. **Whitehead**, 127/774, 56 S. E. 1004.
- Equitable protection of. **Bishop**, 103/281, 29 S. E. 968.
- Is of tenant in, though heirs reside with her. **Arnold**, 122/72, 49 S. E. 812.
- Prescriptive** title cannot run against heirs, by possession during widow's

lifetime. *Green*, 145/241, 88 S. E. 976.

Record as notice of what land set apart. *Hawkins*, 131/353, 62 S. E. 285.

Rents of land, right as to. *LaGrange Mills*, 121/435, 49 S. E. 400.

Return of commissioners not made judgment of court; right of purchaser of lands, and of one holding under him, to have order passed nunc pro tunc. *Ogletree*, 135/34, 68 S. E. 789.

Reversion included in sale by agreement, but levy excessive, no title passes, and reversioners not estopped from recovering the land. *Richards*, 138/690, 76 S. E. 64.

Subject to levy and sale. *Rusk*, 121/379, 49 S. E. 261.

Right, when accrues; what gives. *Johnson*, 102/354, 30 S. E. 507.

Secured debt; priority of payment before allowance of dower. *Ferris*, 110/102, 35 S. E. 347.

Seized and possessed, not as to land conveyed as security. *McDonald*, 120/405, 47 S. E. 918; *Harris*, 129/74, 58 S. E. 1038, 12 Ann. Cas. 475.

Testamentary disposition, dower may be taken regardless of. *Falligant*, 133/87, 65 S. E. 149.

Title acquired by purchaser subject to vested right. *Starr*, 107/395, 33 S. E. 427.

Undivided interest of husband in land, to be considered in assigning. *Gilmer*, 146/721, 724, 92 S. E. 67.

Value of land for rent; error in directing verdict. *McDonald*, 120/405, 47 S. E. 918.

Of lands, price at which sold by representative of estate, conclusive of. *Johnson*, 102/354, 30 S. E. 507.

Waiver, facts not showing. *Starr*, 107/395, 33 S. E. 427.

DRAFTS. See *Banks*; *Bills* and *Notes*.

DRAINAGE. See *Municipal Corporations*.

Act of 1911, to establish drainage districts and courts, construed and held

constitutional. *Almand*, 143/711, 85 S. E. 909.

Action for damages, by landowner who did not appeal from report of viewers, does not lie for value of land or for negligent injury. Corporation is governmental agency. *Almand*, 147/532, 94 S. E. 1028; *Almand*, 21 A. 744, 95 S. E. 14; *McElroy*, 21 A. 747, 95 S. E. 15; *Crump*, 18 A. 437, 89 S. E. 586.

Assessment, omission to pay, in time, is a consent to bond issue, a waiver of illegality, etc. *Perkins*, 148/292, 96 S. E. 418.

Benefits considered. Not necessary that land be wet or swamp land, or subject to overflow. *Crump*, 18 A. 437, 89 S. E. 586.

Contractor's failure to complete work and remove obstructions, no defense against collection of assessment. *Perkins*, 148/292, 96 S. E. 418.

Damages to property, liability of district for. *Almand*, 21 A. 744, 95 S. E. 14.

Eminent domain, power of, is merely incidental to exercise of powers and duties created for public benefit. *Almand*, 21 A. 744, 95 S. E. 14.

Health, question of benefit to, submitted to jury. *Crump*, 18 A. 437, 89 S. E. 586.

Injunction against sale under assessment, denied. *Perkins*, 148/292, 96 S. E. 418; *Borders*, 148/485, 97 S. E. 70.

Levy of assessment fi. fa. not void on account of excess. *Perkins*, 148/292, 96 S. E. 418.

Liability of district taking or damaging property. *Almand*, 21 A. 744, 95 S. E. 14.

Negligence of officers and agents, district not liable for, unless made so by statute. *Almand*, 21 A. 744, 95 S. E. 14.

Police power of the State, legislation is referable to. *Almand*, 21 A. 744, 95 S. E. 14.

Report of board of viewers, admitted in evidence. *Crump*, 18 A. 437, 89 S. E. 586.

DRAYMAN. See Carriers.

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DRIVERS. See Automobiles; Criminal Law; Damages; Master and Servant; Negligence.

DRUGS AND DRUGGISTS. See Criminal Law; Damages; Liquors; Medicines.

Sale regulations; constitutional law. Stanley, 135/859, 70 S. E. 591.

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DUALITY. See Officers; Principal and Agent.

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DUBLIN JUDICIAL CIRCUIT. Constitutionality of act creating. Lynn, 141/500, 81 S. E. 205.

DUE-BILLS. See Bills and Notes. Amount; effect of omission of dollar-mark and of the word "dollars." Henning, 18 A. 208, 89 S. E. 166.

Consideration, want of; plea good. Mackin, 133/550, 66 S. E. 265, 134 Am. St. R. 220.

Denominating paper as "due-bill," in charge to jury, not error. Henning, 18 A. 208, 89 S. E. 166.

Indorsee of, though for value and without notice, where no words of negotiability, charged with notice of defects. Mackin, 133/550, 66 S. E. 265, 134 Am. St. R. 220.

DUE PROCESS. See Constitutional Laws; Judgments.

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Avoidance of contract for. Fenwick Shipping Co., 133/43, 45, 65 S. E. 140.

Composition with creditors, payment to prevent interference with, made under duress. Brown, 111/404, 36 S. E. 813.

Conveyance by parents, to secure payment of debt of son under arrest for theft, voidable. Hodges, 146/624, 92 S. E. 49.

Of wife's land, obtained by imprisonment and prosecution of husband on his debt, avoided. Jordan, 143/143, 84 S. E. 549, L. R. A. 1915D, 1122.

Evidence did not show duress of threatened prosecution; conveyance not avoided. Smith, 143/837, 85 S. E. 1034.

Extortion of money by, gives right of action. Fenwick Shipping Co., 133/43, 45, 65 S. E. 140.

False statement of criminal liability, and threat of prosecution, when do not constitute. Mallory, 135/702, 70 S. E. 586.

Fine not paid under, prevents prosecution of writ of error. White, 1 A. 569, 57 S. E. 1038.

Imprisonment legal, actual or threatened, when no duress. White, 1 A. 569, 57 S. E. 1038.

Threatened for "pretended crime, which the defendant had not committed," no duress. Bond, 1 A. 798, 57 S. E. 944.

Issue of, when no error in withholding from jury. Dorsey, 143/187, 84 S. E. 467, Ann. Cas. 1917A, 172.

Payment for permitting walls to be joined, demand for, and threatening to prevent the same, is not duress. Leader, 135/468, 69 S. E. 721.

Of money under; what necessary for recovery. Williams, 115/864, 42 S. E. 256.

Plea of, must state facts constituting. Bond, 1 A. 798, 57 S. E. 944.

Defective, when not aided by separate paragraph. Pate, 114/651, 40 S. E. 715.

Threat of criminal prosecution as. Harris, 101/84, 28 S. E. 620.

Of husband to abandon wife unless she signed note; this defense not supported by circumstances. Dorsey, 143/186, 84 S. E. 467, Ann. Cas. 1917-A, 172.

Of seizure of baggage was. Fenwick Shipping Co., 133/43, 45, 65 S. E. 140.

Of arrest, etc., what necessary to constitute duress. Bond, 1 A. 798, 57 S. E. 944.

Wife's signature under duress by husband; pleading demurrable. McDonald, 117/122, 43 S. E. 422.

DUTY. See Master and Servant; Negligence; Officers.

DWELLING-HOUSE. See Criminal Law.

DYING DECLARATIONS. See Charge to Jury; Criminal Law; Evidence.

DYNAMITE. See Criminal Law.

EARLY COUNTY.

Decatur and Baker counties carved from. McCaskill, 138/123, 74 S. E. 1032.

School districts not legally laid off from territory less than entire county. Tax levy illegal. Grier, 143/428, 85 S. E. 323.

EARNINGS. See Alimony; Damages; Husband and Wife; Parent and Child.

EASEMENTS. See Cemeteries; Dedication; Estates; Injunctions; License; Municipal Corporations; Possession; Private Ways; Railroads; Roads and Streets; Waters.

Abandonment or forfeiture by nonsuer did not result by allowing dam to leak. Monroe, 139/729, 78 S. E. 130.

Evidence as to. Gaston, 120/516, 48 S. E. 188. **Of street by municipality.** Kelsoe, 120/951, 48 S. E. 366, 102 Am. St. R. 138.

Of land dedicated for street, by municipal corporation. Mayor &c. of Savannah, 148/317, 96 S. E. 625.

Access to lot, interference with. Atlantic &c. Ry. Co., 125/329, 54 S. E. 148.

Alley, right of easement in, passed by deed. How lost by encroachment. Wimpey, 137/325, 73 S. E. 586.

Injunction against sale of land in such a way as to affect. Harris, 134/161, 67 S. E. 880.

Appurtenant to land, arising on parol license executed at expense of licensee. Cherokee Mills, 138/586, 76 S. E. 373.

Assignability; passage of right without words of. Stovall, 116/378, 42 S. E. 723.

Cemetery-lot owner takes only easement. Nicolson, 142/729, 83 S. E. 658, L. R. A. 1915E, 168; **City Council of Augusta,** 146/459, 91 S. E. 486; **Stew-**

- art, 119/386, 46 S. E. 427, 64 L. R. A. 99, 100 Am. St. R. 179.
- Condemnation of, for sewer; what damages recoverable.** Potts, 140/431, 79 S. E. 110.
- Of railroad way to private quarry. Jones, 120/1, 47 S. E. 549, 1 Ann. Cas. 185. Railroad way for telegraph line. Atlantic & C. R. Co., 120/268, 48 S. E. 15, 1 Ann. Cas. 734.
- Of way for transmission of electricity, what exempt from, and what not. Stribbling, 139/676, 78 S. E. 42; Beuchler, 139/726, 78 S. E. 121.
- Covenant in deed recorded, later grantees take burden as well as benefit of.** Horne, 142/489, 83 S. E. 204, Ann. Cas. 1916B, 1212.
- In sale of telephone line and privileges, was not one running with land. Greer, 140/743, 79 S. E. 846.
- Ran with land conveyed. Planters Gin Co., 146/694, 92 S. E. 220.
- Dedication implied, facts relied on to show, must clearly indicate intent.** Mayor & C., 140/353, 78 S. E. 906.
- Not implied without clear evidence of intent to give, and of acceptance. City of Atlanta, 148/635, 98 S. E. 83.
- Of streets in land subdivision, acceptance and work by town, easement for the public acquired. Wade, 136/89, 70 S. E. 880.
- What essential to. Healey, 125/736, 54 S. E. 749.
- Deed, reservation of easement under; not exception of described parcel of land.** Georgia & C. Ry., 145/817, 90 S. E. 44.
- Defined, appurtenant and in gross.** Stovall, 116/378, 42 S. E. 723.
- Eminent domain, estate acquired under power of; when an easement, and when a fee simple.** Alexander, 134/849, 855, 68 S. E. 704.
- Enlargement of, may be prevented by subsequent vendee as owner of servient estate.** Central Ry. Co., 144/91, 86 S. E. 228.
- Fee simple, conveyance of right of way in, does not carry fee in the land.** L. & N. R. Co., 133/19, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.
- Forfeiture of, by non-user.** Mayor & C. of Savannah, 139/198, 72 S. E. 1095.
- Inconsistent use; not by street across railroad.** Town of Poulan, 123/605, 51 S. E. 657.
- Not shown by different railroad tracks on same premises. Perkins Lumber Co., 117/441, 43 S. E. 692.
- In gross, as mere personal privilege; when not so treated.** Cherokee Mills, 138/586, 76 S. E. 373.
- Injunction against closing.** Planters Gin Co., 146/694, 92 S. E. 220. Refusal of injunction no error. Trant, 146/708, 92 S. E. 212.
- Intention to abandon not shown.** Cherokee Mills, 138/856, 76 S. E. 373.
- License in parol; conflicting evidence.** Trant, 146/708, 92 S. E. 212.
- Light and air, instrument construed as creating no easement of.** Smyth, 135/96, 99, 68 S. E. 1032.
- Mil dam, right to maintain, by prescription.** Whelchel, 116/431, 42 S. E. 776.
- Non-user alone, with no other evidence of intent, when no abandonment.** Mayor & C. of Savannah, 148/317, 321, 96 S. E. 625.
- Not existent in one's own property; lesser estate merged into greater.** Grizzard, 136/299, 71 S. E. 430.
- Obstruction of alley; allegations not sufficient as to unreasonableness, to recover damages.** Miller, 146/173, 91 S. E. 24.
- Parks dedicated to public use, right of lot-owners to easement in.** East Atlanta Land Co., 138/380, 75 S. E. 418.
- Prescriptive right to, in use of water-course, how acquired.** S. A. L. Ry., 4 A. 7, 10, 60 S. E. 868.
- To pond back water. Monroe, 139/729, 78 S. E. 130.
- To encroachment on. Wimpey, 137/325, 73 S. E. 586.
- Not acquired as to way over railroad, permissive but not adverse and exclusive. City of Atlanta, 148/635, 98 S. E. 83.
- Private way by prescription not shown by evidence, damages not recovered for closing.** Nashville, & C. Ry., 133/820, 66 S. E. 1085.

Protection against claim of, in favor of purchaser bona fide and without notice. *Harris*, 134/162, 67 S. E. 880.

Railroad crossing, use of, by public, held not exclusive or adverse. *City of Atlanta*, 148/635 (dissent, 640), 98 S. E. 83.

In street; application of constitutional provision. *Atlantic &c. Ry. Co.*, 125/329, 54 S. E. 148.

Right of way for, easement as. *L. & N. R. Co.*, 133/15, 19, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Right of way, etc.; deed was grant of easement, rather than conveyance of land. *L. & N. R. Co.*, 139/542, 77 S. E. 801.

Spur-track, at factory site, remedy in damages for wrongful removal of. *Cherokee Mills*, 138/856, 76 S. E. 373.

Warehouses erected by, were within grant of. *L. & N. R. Co.*, 139/542, 77 S. E. 801.

Remedy appropriate for disturbance of easement. *Bale*, 123/99, 50 S. E. 900.

Restriction against interfering with grantee's business did not permit closing way with building. *Planters Gin Co.*, 146/694, 92 S. E. 220.

Specific performance of covenant for incorporeal right of. *L. & N. R. Co.*, 145/597, 89 S. E. 693.

Water and air, damages for interference with. *Darnell*, 129/62, 58 S. E. 631, 13 L. R. A. (N. S.) 333, 121 Am. St. R. 206.

Access to, as easement appurtenant. *Aiken*, 134/880, 68 S. E. 937; *Musco-gee Mfg. Co.*, 126/410, 56 S. E. 1028, 7 L. R. A. (N. S.) 1139.

Overflow, right of easement in land for; deed construed. *Central Georgia Power Co.*, 141/843, 82 S. E. 243, Ann. Cas. 1916D, 1020.

Privileges in unnavigable stream, exception of, covered exclusive right to fish. *Lee*, 116/18, 42 S. E. 372.

To flow-back. *Stribbling*, 139/676, 78 S. E. 42; *Beuchler*, 139/726, 78 S. E. 121; *Monroe*, 139/729, 78 S. E. 130.

Way, contract for easement of, merged into deed; and specific performance defeated. *Nelson*, 135/572, 580, 69 S. E. 1118.

Defendant in trespass suit may show acquirement of, by owner's testimony. *Gaston*, 120/516, 48 S. E. 188.

Right of, passed to successor in title. *Stovall*, 116/378, 42 S. E. 723.

Trespass by destroying easement of. *Atkinson*, 140/52, 78 S. E. 465.

EASTMAN. See *Municipal Corporations*.

EAST ROME. See *Municipal Corporations*.

EATONTON. See *Municipal Corporations*.

ECCLESIASTICAL MATTERS. See *Churches; Religious Societies*.

EDUCATION. See *Contracts; Counties; Guardian and Ward; Municipal Corporations; Parent and Child; Schools; Taxation; Trusts*.

Board of, discharged, no writ of error. *Board*, 134/839, 68 S. E. 552.

Devise to educational institution. *Trustees*, 141/391, 400, 81 S. E. 238.

EDUCATIONAL FUND.

Administrator's sale not enjoined on allegation that estate should be escheated. *Duggan*, 101/760, 29 S. E. 19.

EJECTMENT. See *Damages; Eviction; Railroads; Title*.

Abatement of action, pendency of former suit for same land was cause for. *Eppinger*, 141/639, 81 S. E. 1035.

Pending suit on notes for price of land was no ground for. *Wimpee*, 148/418, 96 S. E. 993.

Abstract of title, absence of, no cause of demurrer. *Georgia Iron &c. Co.*, 116/444, 42 S. E. 794.

Amendable. *Tapley*, 115/111, 41 S. E. 235; *Lee*, 120/529, 48 S. E. 129; *Brice*, 121/216, 48 S. E. 925; *Dugas*, 130/94, 60 S. E. 268.

Deeds must be recited in. *Lee*, 120/529, 48 S. E. 129.

Effect of, as allegation of title, in statutory action of complaint for land. *Chancey*, 148/87, 95 S. E. 975.

No need of annexing, if petition show source of title claim. *Rooks*, 129/744, 59 S. E. 778.

Not required in action to recover land from transferee of licensee. *Waters*, 135/804, 812, 70 S. E. 338.

Object of, not to show title, but to give notice of what will be relied on. *Crawford*, 146/526, 91 S. E. 780.

Accounting by plaintiffs for money, appropriate pleading necessary for defendant to obtain. *Hawks*, 141/423, 424, 81 S. E. 200.

Equitable, action for, not dealt with as suit to recover undivided interest in land. *Smith*, 141/629, 633, 81 S. E. 895.

Action by holder of deed to secure debt not abated by suit on note for the debt. *Underwood*, 139/241, 243, 77 S. E. 46.

By remaindermen not supported by deed from one having no title. *Spurlin*, 146/420, 91 S. E. 479.

By temporary administrator, legal or equitable, not maintained; and amendment, substituting permanent administrator, not allowed. *Ward*, 135/515, 69 S. E. 817.

In common-law form obtains. *Georgia Iron &c. Co.*, 116/444, 42 S. E. 794.

Is not demand for enforcement of illegal contract. *Beard*, 120/1022, 48 S. E. 400.

Is not ex contractu, but partly ex delicto. *Ramey*, 121/516, 49 S. E. 595.

Joint, no recovery if one plaintiff not entitled. *Wooding*, 112/509, 37 S. E. 720. **Aliter**, if suit joint and several. *Greenfield*, 112/692, 38 S. E. 44.

Maintained by children, in lifetime of mother, who took estate in common with her, burdened with her life use. *Bostwick*, 136/54, 70 S. E. 677.

Not authorized by exercise of power to sell, in deed to secure loan. *Southern Title Co.*, 137/478, 73 S. E. 661.

Right of, primarily in personal representative of deceased owner in reversion. *Edwards*, 147/12, 92 S. E. 540.

Treated as ejectment though not so styled by the pleader. *Wachstein*, 128/233, 57 S. E. 511, 11 L. R. A. (N. S.) 917, 119 Am. St. R. 381.

Was not complaint to recover land; prayer for decree of title, denying possession in defendant. *Tucker*, 148/47, 95 S. E. 672.

Form of, was statutory complaint. *Fullbright*, 131/344, 62 S. E. 188.

Adjudication of title not made by judgment on warrant to dispossess. *Jordan*, 103/482, 30 S. E. 265.

Administrator can not recover in ejectment from heir's vendee, without showing necessity under the code. *Winn*, 141/680, 81 S. E. 1106.

In whom demise laid; necessity of proving appointment and qualification. *Guest*, 145/592, 89 S. E. 687.

May recover land, where proceeding for setting it apart as a year's support was too vague and uncertain to be enforced. *Hawes*, 131/324, 62 S. E. 227.

Not heir, has right of action for land; rule and exceptions. *Strickland*, 142/132, 82 S. E. 561. See *Heirs*.

Action by; defense by heirs' claim; error in direction of verdict. *Marchant*, 147/37, 92 S. E. 863.

Action of ejectment by, what proof necessary to support. *Adams*, 132/455, 64 S. E. 467.

No recovery under deed of, against holder of bond for title, from intestate. *Heard*, 101/691, 31 S. E. 216, 44 L. R. A. 369.

Deed of, without order of sale, no basis of recovery. *Waller*, 114/383, 40 S. E. 254.

Liability of, in ejectment. *Hundley*, 9 A. 270, 70 S. E. 1115.

Prima facie case in action by. *DuBignon*, 123/616, 51 S. E. 574.

Recovery by, from heir where property required to pay debts. *Craddock*, 129/818, 60 S. E. 193.

Remedy of, to recover possession of land from heir or person holding under heir; not dispossessionary warrant. *Bacon*, 19 A. 661, 91 S. E. 1063.

Right of, to recover from vendee of heir; order for sale prima facie evidence. *Cochran*, 131/588, 62 S. E. 1048. Recovery of land from heir, evidence of need for, admissible. *Craham*, 131/785, 63 S. E. 348.

Suit of; heir's defense by attacking order of sale for want of personal service on him. *Park*, 124/1072, 53 S. E. 568.

Temporary, can not recover in ejectment. *Bank*, 112/542, 37 S. E. 866.

With will annexed, recovery by, denied. *Hodges*, 140/571, 79 S. E. 462.

Admission of plaintiff that he was to reconvey land on repayment of money, admissible in defense. *Spencer*, 132/515, 64 S. E. 466.

Of possession, rule as to need of, for defense against action, when not applicable. *Tucker*, 148/47, 95 S. E. 672.

Of title in plaintiff's grantor is made by defendant's claiming under that grantor. *Deen*, 128/265, 57 S. E. 427.

Affidavit of deceased witness, used on hearing of other case, when not admissible in evidence. *Dennard*, 142/171, 81 S. E. 558.

After-acquired title not available for recovery, where no title when suit com-

menced. *Town of Decatur*, 144/728, 87 S. E. 1036.

Proof of, not admissible. *Deas*, 126/431, 55 S. E. 170, 7 Ann. Cas. 1124.

Allegations authorizing recovery by purchaser at sale under power in security deed. *McKnight*, 145/798, 89 S. E. 837.

Amendment adding new demise, when allowable, and when not. *Deas*, 126/432, 55 S. E. 170, 7 Ann. Cas. 1124.

Adding prayer for partition, in equitable petition to recover land, etc., allowed. *Hodges*, 126/852, 56 S. E. 76.

By heir attacking sale by administrator, no new cause. *Oliver*, 114/592, 40 S. E. 826.

By striking equitable allegations and prayers. *Wood*, 103/235, 29 S. E. 820.

Discretion as to allowing. *Moore*, 126/735, 55 S. E. 950.

Laying new demise did not relate to filing of petition. *Bentley*, 119/911, 47 S. E. 209.

Laying new demise, where sole demise in declaration laid in one deceased when suit began. *Roberts*, 136/901, 72 S. E. 234.

Misdescription corrected by. *Sweat*, 123/332, 51 S. E. 331.

No new cause setting up ownership. *McCandless*, 115/968, 42 S. E. 449.

Of declaration as to averments descriptive of land. *Eppinger*, 141/639, 640, 81 S. E. 1035.

Of description. *Luquire*, 121/624, 49 S. E. 834; *Stringer*, 141/404, 81 S. E. 194.

Of judgment in ejectment, by adding as plaintiffs persons whose names were inadvertently omitted from the petition, not allowed, when. *Bond*, 113/82, 38 S. E. 405.

Praying for cancellation, necessary parties to; prayer properly denied. *Malone*, 101/194, 28 S. E. 689.

Reformation of deed, prayer for, a distinct cause. *Venable*, 118/156, 45 S. E. 29.

Did not change action to cancel deeds into one of complaint for land. **Southern Title Co.**, 137/478, 73 S. E. 661.

Showing chain of title, ineffective if filed without order of court allowing. **Clark**, 144/544, 87 S. E. 670.

Substituting correct lot number, when not allowed. **Venable**, 118/156, 45 S. E. 29.

See catchwords, **Abstract of title, Disclaimer, Joint demise, Mesne profits, Parties, Practice.**

Agreement executed and ratified, between widow and children, supported defense. **Bates**, 148/157, 96 S. E. 178.

Argument opened and concluded by defendant in ejectment, who by plea admits right in plaintiff to recover unless defense established. **Norton**, 134/21, 67 S. E. 425; **Widincamp**, 135/644, 70 S. E. 566.

Averment that defendant is trespasser, not needed, where plaintiff relies on possession. **Moss**, 126/196, 54 S. E. 968.

Bond for title no basis to recover in. **Chalker**, 138/676, 75 S. E. 1055.

Boundary line between adjoining owners; effect of prior processioning proceedings. **Chambers**, 145/52, 88 S. E. 545.

Burden of proof of better title, shifted by evidence of plaintiff's prior possession. **Moss**, 126/196, 54 S. E. 968.

On defendant asserting divestiture of title from plaintiff's predecessor. **Hall**, 146/815, 92 S. E. 536.

Recovery on strength of plaintiff's title; not weakness of defendant's. **Coursey**, 141/65, 69, 80 S. E. 462.

Of notice, actual or imputable, of plaintiff's equitable title. **Marshall**, 136/544, 71 S. E. 893.

Of possession in defendant, not upon plaintiff, where defendant admits possession. **McElroy**, 142/37, 82 S. E. 442.

On plaintiff to establish right to recover land sued for, or definite part of it. **Addison**, 138/623, 75 S. E. 648.

Cause of action alleged, to recover land set apart as year's support to plaintiff and her mother. **Palmer**, 141/61, 80 S. E. 322.

Must be complete when suit filed. **Deas**, 126/432, 55 S. E. 170, 7 Ann. Cas. 1124.

Not alleged, to recover land conveyed for railroad purposes, in part unused and in part used for different purpose. **Harrold**, 131/360, 62 S. E. 326.

Certified copy of proceedings to establish copy of deed, admissible. **Graham**, 137/668, 74 S. E. 426.

Charge and refusals to charge jury in action of ejectment as to abandonment of possession, etc., not error. **Mitchell**, 134/383, 67 S. E. 1042.

As to right to recover, when erroneous. **Heatley**, 135/154, 68 S. E. 783.

Collateral attack in ejectment not allowed, as to administrator's sale under regular order, for fraud. **Martin**, 134/481, 68 S. E. 80.

Collateral issue of forgery, no basis of writ of error while main case still pending. **Jones**, 106/850, 33 S. E. 41.

Common grantor, admission filed in other suit relevant to show that parties claim under. **McTyer**, 142/852, 83 S. E. 955.

Attack on title of, when not allowed. **Gable**, 130/689, 61 S. E. 595.

Evidence showing that both parties claimed under. **Holder**, 119/256, 46 S. E. 93.

Recovery on proving title and right of entry derived from. **Roberts**, 146/495, 91 S. E. 675.

Shown by pleadings, or by evidence alone, in an action for land, dispenses with proof of title in him. **Brinkley**, 126/480, 55 S. E. 187.

Verdict for better title directed. **Lott**, 142/808, 83 S. E. 857.

Common-law action of ejectment and provisions applicable, are of force. **Carrie**, 145/186, 88 S. E. 949.

Complaint in statutory short form may be used since pleading act of 1893.

- Abstract** attached to petition defines claim of title. *Dugas*, 130/87, 60 S. E. 268.
- Consent rule** considered as filed; not where possession of defendant negatived by pleading. *Tucker*, 148/47, 95 S. E. 672.
- Contract** of rental for less than five years, no such estate as to authorize recovery in ejectment. *Frey*, 148/581, 97 S. E. 529.
- Contribution**, defendants can not have. *Holmes*, 136/759, 72 S. E. 38.
- Conveyance** pending suit did not preclude judgment for plaintiff, though grantee agreed to judgment for defendant. *Suwannee Co.*, 109/597, 35 S. E. 142.
- Plaintiff can not attack his own, or that of his predecessor. *Castellow*, 119/461, 46 S. E. 632.
- Copy** of lost record (muniment of title), establishment of, on notice, pending action for land. *Nixon*, 137/516, 73 S. E. 747.
- Corporation**, recovery for benefit of, on legal title of incorporators. *McCandless*, 115/968, 42 S. E. 449.
- Cotenants**, this action does not lie between. *Harrison*, 105/517, 31 S. E. 455, 70 Am. St. R. 60; *Thompson*, 113/1024, 39 S. E. 419.
- Action lies against cotenant holding adversely, by owner of undivided interest. *Burney*, 134/141, 67 S. E. 712. Compare *Gann*, 134/51, 52, 67 S. E. 435.
- Deed** executed and delivered to defendant after suit commenced, when admissible. *Swint*, 147/467, 94 S. E. 571.
- From stranger to the paramount title, not shown to have been in possession, insufficient to show title. *Nesmith*, 128/508, 57 S. E. 763.
- Made as security for debt, ejectment lies on. Liability, on recovery, to account thereafter for profits, etc., and to yield possession back. *Pusser*, 132/282, 283, 64 S. E. 74, 22 L. R. A. (N. S.) 571. See *Spencer*, 132/515, 64 S. E. 466. See also *Deeds*.
- V. II—32.
- Presumption** of claim under, by defendant producing it under notice, rebuttable. *Brinkley*, 126/480, 55 S. E. 187.
- Same grantor, deeds of both parties from, not recorded, plaintiff claiming under younger deed not entitled to recover. *Williams*, 128/306, 57 S. E. 801.
- Default** in pleading, direction of verdict on. *Boaz*, 105/228, 31 S. E. 163.
- Defense** equitable, by vendee against vendor retaining title, where part purchase-money due, and defendant sets up fraud of vendor in misrepresentation as to title. *Jay*, 8 A. 482, 70 S. E. 16.
- Limited to title relied on in answer. *McCandless*, 115/979, 42 S. E. 449.
- Made by plea; not by independent action for equitable relief. *McCall*, 120/661, 48 S. E. 200.
- That deed was made only to convey title until creditor was paid, that he was paid, and that deed should be cancelled, not heard from grantor therein. *Tune*, 131/528, 62 S. E. 976.
- When unnecessary to anticipate. *Moss*, 126/196, 54 S. E. 968.
- Demand** before suit by cotenants against one holding under vendee of cotenant's administrator, when not necessary. *Bowman*, 133/53, 65 S. E. 156.
- Demises**, one of several, made in name of decedent, may be stricken without dismissing action. *Morris*, 145/562, 89 S. E. 704.
- Demurrer** may point to prescriptive title in defendant, shown by petition. *Gunter*, 113/18, 38 S. E. 374.
- Petition subject to, not saved by pendency of independent equitable action between same parties. *Buchan*, 131/509, 62 S. E. 819.
- Description** duplicitous, as to land sued for. *Eppinger*, 141/639, 81 S. E. 1035.
- In deed relied on being different from that in the petition, nonsuit granted. *Canady*, 141/371, 81 S. E. 207.
- Issue** of fact as to; error in directing verdict. *Oliver*, 102/157, 29 S. E. 159.

Applied to subject-matter by extraneous evidence. **Palmer**, 141/61, 80 S. E. 322; **Stringer**, 141/403, 81 S. E. 194.

By reference, in deed declared on, to a will of record, held sufficient. **Yopp**, 148/539, 97 S. E. 534.

Insufficient, dismissal for. **Clark**, 129/291, 58 S. E. 841.

Rule of definiteness required. **Stringer**, 141/404, 81 S. E. 194.

Insufficient. Verdict not set aside, if question not raised at trial. **Rooks**, 129/744, 59 S. E. 778.

What essential; and when not sufficient. **Williams**, 136/453, 71 S. E. 886; **Hollywood Cemetery Co.**, 133/271, 65 S. E. 777; **Crosby**, 133/560, 66 S. E. 897; **Simmons**, 138/605, 75 S. E. 671.

Sufficiency of. **Levy**, 135/94, 68 S. E. 1038; **Bowen**, 135/567, 69 S. E. 1115.

Definite. **Leverett**, 121/534, 49 S. E. 591. Indefinite. **Luquire**, 121/624, 49 S. E. 834; **Luttrell**, 121/699, 49 S. E. 691; **Pitts**, 121/704, 49 S. E. 693. Sufficient as lis pendens. **Johnson**, 121/763, 49 S. E. 757. When too indefinite. **Hunter**, 137/258, 73 S. E. 380.

See catchword **Amendment**.

Devise, presumption of executor's assent to, as basis of defense. **Phillips**, 119/556, 46 S. E. 640.

Devisee under will executed and probated in other State can not maintain suit for land adversely held, until due probate in this State. **Chidsey**, 130/218, 60 S. E. 529, 14 Ann. Cas. 975.

Disclaimer by defendant, when required; court could allow defendant to amend at trial by withdrawing denial of possession. **Moore**, 126/735, 55 S. E. 950.

Easement or license, right of, does not support this action. **Stewart**, 119/386, 46 S. E. 427, 64 L. R. A. 99, 100 Am. St. R. 179.

Election of demise relied on for recovery, not compelled. **Carris**, 145/184, 88 S. E. 949.

Entry, right of, in grantor or his heirs, on failure of contingent remainder after estate for life. **Edwards**, 147/12, 92 S. E. 540.

Equitable adjustment of rights of parties to action of ejectment, by verdict in this case. **Lightfoot**, 133/766, 66 S. E. 1094.

Decree not based on action of complaint. **Milner**, 104/101, 30 S. E. 648.

Defense; need of proper parties. **Grace**, 129/638, 59 S. E. 811.

Defense upheld, based on accounting for part payment and want of title to part of land. **Wimpee**, 148/418 (dissent, 419), 96 S. E. 993.

Defense was not demurrable. **Swift**, 138/229, 75 S. E. 8.

Jurisdiction as to trial of title. **Baxter**, 126/359, 54 S. E. 1036.

Pleading, when amounts claimed for taxes not recovered on. **Levy**, 135/94, 68 S. E. 1038.

Relief against sole non-resident defendant, plaintiff can not have, unless defendant prays for affirmative relief. **Lightfoot**, 133/766, 66 S. E. 1094.

Relief in aid of ejectment. **Vizard**, 117/67, 43 S. E. 426.

Relief prayed, ancillary to action of ejectment, legal rules applied. **Moss**, 126/201, 54 S. E. 968.

Relief obtainable under plea to action based on security deed. **Paden**, 140/46, 78 S. E. 412.

Remedy of cancellation available before suing to recover possession of land. **Gilmore**, 137/274, 73 S. E. 364.

Suit not treated as action of ejectment, without appropriate prayer. **Steed**, 115/97, 41 S. E. 272.

Suit to collect debt, not pleaded as action of ejectment. **Story**, 110/66, 35 S. E. 314.

Title as defense: from parol exchange of lands, with possession. **Baldwin**, 117/827, 45 S. E. 216.

Title, recovery on. **Hester**, 141/832, 82 S. E. 250.

Title supporting action, inferior to right of purchaser from possessor with

apparent legal title. **Riddle**, 147/387, 94 S. E. 236.

Title; what necessary as basis of recovery. **Thomas**, 115/11, 41 S. E. 269; **McCandless**, 115/973, 42 S. E. 449.

Waiver of ejectment by resorting to equity. **Charleston &c. Ry. Co.**, 105/1, 30 S. E. 972, 70 Am. St. R. 17.

Estoppel of remainderman who received money with knowledge, issue as to. **Hawks**, 141/423, 81 S. E. 200.

Plea and evidence of. **Fletcher**, 134/368, 67 S. E. 1034.

To assert title, by having induced another to buy land as property of third person, when effective. **Tune**, 131/528, 62 S. E. 976.

Eviction or its equivalent, constituting breach of warranty of title, what evidence necessary to show. **Burns**, 132/349, 64 S. E. 113.

Actual dispossession not essential, if presently yielding to paramount outstanding title be necessary. **Joyner**, 132/779, 65 S. E. 68.

Evidence, harmless errors in admitting. **Spillar**, 148/90, 95 S. E. 994.

Admissibility of, over objections presented. **Alaculsey Lumber Co.**, 146/310, 91 S. E. 104.

Admissible, of defendant's previous connection with conveyance under which plaintiff claims. **Vizard**, 119/918, 47 S. E. 348.

Admissibility of copy of lost deed, from registry; of ancient map, etc. **Bower**, 126/35, 54 S. E. 918.

Competent, that defendant failed to give notes as intended and as deed recited. **Paden**, 146/46, 78 S. E. 412.

Given in other case by witness since deceased, admissibility of. **Heatley**, 135/154, 68 S. E. 783.

Incompetency of defendant as witness, who is sued by executor of his grantor. **McElroy**, 142/38, 82 S. E. 442.

In parol, of deed (lost) executed by deceased lessor and delivered to witness as grantee, competent. **Roberts**, 136/901, 72 S. E. 234.

Insufficient to show title; nonsuit. **Youmans**, 144/375, 87 S. E. 273.

Not sufficient to establish prima facie case of title from common propositus, nonsuit. **Canady**, 141/371, 81 S. E. 207.

Of possession; "Back boxing," paying taxes, etc., admissible. **Mitchell**, 134/383, 67 S. E. 1042.

Partition proceeding held irrelevant as, to show title or color of title. **Levy**, 135/94, 68 S. E. 1038.

Relevant in; mesne conveyances from widow to whom land was set apart as year's support. **Sizemore**, 130/667, 61 S. E. 536.

Executor holding title as trustee, demise in name of executor not available. **Deubler**, 139/773, 78 S. E. 176.

Appointment and qualification, proof of, where demise laid in him. **Deubler**, 139/773, 78 S. E. 176.

Foreign, no recovery on demise in name of, unless will duly probated here. **Heatley**, 135/154, 68 S. E. 783.

Suing; common-law rule as to profer of will abrogated by statute; but will not wholly irrelevant. **Deubler**, 139/773, 78 S. E. 176.

Failure to identify land, or to show title, was ground for directing verdict against plaintiffs. **Morris**, 147/58, 92 S. E. 878.

Former action; admissibility of record as evidence. **Chatman**, 127/360, 56 S. E. 439.

Fractional interest, recovery of, some evidence showing plaintiff entitled to whole. **Georgia Iron &c. Co.**, 121/483, 49 S. E. 618.

Fraud of both parties, as affecting right to recover. **Sewell**, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

In conveyance, attack of, without resort to equity. **Bourquin**, 110/440, 35 S. E. 710.

Gift of land in parol, as defense to action by grantee of donor. **Dunn**, 145/195, 88 S. E. 931.

Grant, evidence of; fragments of wax and paper, when admissible in evidence. **Mitchell**, 134/383, 67 S. E. 1042.

Grantor in void deed may maintain action of, without equitable proceeding to

cancel it. *Bond*, 133/160, 65 S. E. 376, 134 Am. St. R. 199.

Heirs at law, suit by, requires showing of absence of administration or consent of administrator. *Grooms*, 147/206, 93 S. E. 201; *Purvis*, 148/79, 95 S. E. 964; *Jackson*, 148/316, 96 S. E. 630; *Gorato*, 141/597, 81 S. E. 860; *Wilson*, 127/316, 56 S. E. 457.

Action by, for realty purchased by administrator at his own sale, to be brought in seven years. *Griffin*, 119/138, 46 S. E. 66.

Right of action by, where no administrator and no need of administration. *Lancaster*, 146/82, 90 S. E. 710.

Must allege and prove no administration or assent of administrator. Rule not applied to partition suit between heirs. *Hunnicut*, 135/596, 69 S. E. 913.

Husband as sole heir of wife may recover in, without showing absence of administration. *Jackson*, 148/312, 96 S. E. 630.

Showing possession of their father at his death, under a deed, made case for recovery. *Ellis*, 147/315, 93 S. E. 895.

Suing with administrator's consent, but showing deed from their ancestor to defendant, can not recover, where no showing that deed did not convey title. *Buchan*, 131/509, 62 S. E. 819.

When no recovery on demise to. *Deubler*, 139/775, 78 S. E. 176.

Wife as heir cannot recover without showing as to coheirs. *Malone*, 101/194, 28 S. E. 689.

Homestead land, recovery of, by beneficiary before estate terminated. *Hillard*, 135/168, 68 S. E. 1110, 21 Ann. Cas. 1031.

Not recovered on deed executed by beneficiaries. *Yeates*, 147/335, 94 S. E. 465.

Recovery after sale without court order. *Williford*, 127/786, 56 S. E. 1010.

Set apart to plaintiff's ancestor, title not strengthened thereby. *Moore*, 126/735, 55 S. E. 950; *Nesmith*, 128/508, 57 S. E. 763.

Reversionary interest in; right of grantee of head of family to recover after homestead terminated. *Carrie*, 145/184, 88 S. E. 949.

Improvements as set off against mesne profits; need of certainty in pleading. *Moore*, 116/28, 42 S. E. 258.

Bona fide, placed on land, right of defendant to set off value of. Pleading and practice. *Hawks*, 141/423, 81 S. E. 200. Not applied in suit between cotenants. *Smith*, 141/630, 637, 81 S. E. 895.

Defendant not entitled to credit for; value of church building, or expense of fertilizing. *Crummey*, 114/746, 40 S. E. 765.

On faith of parol gift, etc., right to set off, against mesne profits. *Kemp*, 144/717, 722, 87 S. E. 1030.

Over mesne profits, how set off; necessary allegations of plea. *LaRoche*, 130/596, 61 S. E. 465.

Pending litigation, no credit for. *Hall*, 146/815, 92 S. E. 536; *Hinesley*, 139/7, 10 76 S. E. 385; *Richards*, 138/691, 76 S. E. 64.

Right to set off, extended to tenant of defendant. *Moate*, 146/425, 91 S. E. 420.

Set-off of value. *Bowman*, 133/49, 65 S. E. 156.

Set off under act of 1897. *Acme Brewing Co.*, 115/496, 42 S. E. 8.

Made before act of 1897, set-off. *Lay*, 112/111, 37 S. E. 132.

Set-off against mesne profits since act of 1897. Recovery of excess. *Mills*, 111/275, 36 S. E. 673, 52 L. R. A. 934.

Set-off of excess value over mesne profits, not allowed before act of 1897. *Dudley*, 102/1, 29 S. E. 50.

Permanent, by defendant in possession bona fide, set off value of. *Hicks*, 127/170, 56 S. E. 307.

Inconsistent claims in action of. *Venable*, 129/537, 59 S. E. 253.

Injunction against writ of possession, for want of service, fraud, etc., not warranted by evidence. *Keen*, 136/194, 71 S. E. 141.

Not available in lieu of this action. **Beacham**, 125/362, 54 S. E. 157.

Interest recovered by verdict and decree, greater than plaintiffs were entitled to; new trial required. **Pound**, 146/431, 91 S. E. 405.

Undivided, verdict in action for, must define proportion. **Parrott**, 105/93, 31 S. E. 417.

Intruder, no eviction of possessor as, who holds bona fide. **Coffey**, 106/293, 32 S. E. 115.

Joinder of parties and actions; what allowable, and what not. **Ramey**, 121/516, 49 S. E. 595.

See catchword "Parties," *infra*.

Joint action against persons claiming under distinct titles, not maintainable. **Bradley**, 144/478, 87 S. E. 465.

At law; all or none recover. **Callaway**, 123/350, 51 S. E. 477; **Peavy**, 131/110, 62 S. E. 47; **Glore**, 124/923, 53 S. E. 690; **Hunt**, 140/158, 78 S. E. 805. Rule not applied to action by devisees against executors, for allotment of shares. **Wright**, 140/568, 78 S. E. 546.

When this rule not applied. **Lowe**, 141/380, 81 S. E. 230. Rule not applied in equity. **Bigham**, 114/453, 40 S. E. 303; **McElroy**, 142/38, 82 S. E. 442.

Requires proof of joint title; rule applies to both common-law and statutory forms. **Shaddix**, 130/764, 61 S. E. 828.

By tenants in common, defeated entirely by prescriptive title against one of them. **Williamson**, 136/222, 71 S. E. 138.

By homestead beneficiaries; recovery by one where the other not entitled. **Buchan**, 147/450, 454, 94 S. E. 578.

Not maintainable, if one of the plaintiffs barred. **Napier**, 137/242, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013.

Not maintained against several defendants. Rule in equity different. **Ivey**, 124/163, 52 S. E. 436, 110 Am. St. R. 160.

No recovery on joint demise without title and right of entry in each person

named therein. **Deubler**, 139/773, 78 S. E. 176.

Joint demise stricken on motion of defendants, where plaintiffs amended by striking name of one of joint lessors. **Watkins**, 130/797, 62 S. E. 32.

Judgment against defendant disclaiming, when not binding on landlord or true owner. **Sanford**, 114/1005, 41 S. E. 668.

As basis of recovery. **Willoby**, 113/85, 38 S. E. 314.

Did not bind person not a party defendant who was in possession. **Browning**, 147/400, 94 S. E. 234.

Concludes one vouched into court as warrantor of title, as to defense that could have been or was actually set up. **Taylor**, 131/416, 62 S. E. 291.

One not vouched as party and not participating, not bound by. **Ballard**, 117/823, 45 S. E. 68.

When binding on persons other than parties to action; and when estoppel prevented by assurances. **Moate**, 146/425, 91 S. E. 420.

Laches, doctrine not applied in this action. **Wilkes**, 120/728, 48 S. E. 113; **Lancaster**, 146/82, 90 S. E. 710.

Landlord permitted to defend. Who included by "landlord." **Bower**, 126/35, 54 S. E. 918.

Action by ejectment by, involves right of possession, not title; not conclusive in later action by tenant. **Vada Naval Stores Co.**, 148/681, 98 S. E. 79.

Title of, tenant's vendee without notice of tenancy cannot dispute, before restoring possession. **Vada Naval Stores Co.**, 148/677, 98 S. E. 79.

See **Landlord and Tenant**.

Legatees, including remaindermen, represented by executors suing to recover land to execute the will. **Winn**, 147/427, 94 S. E. 468.

Lessee of grantor in security deed may be dispossessed on sale under junior judgment. **Mattlage**, 106/834, 32 S. E. 940.

Lien not established in this action. **Venable**, 129/537, 59 S. E. 253.

Limitation, no bar by, to action to recover land. Prescription may defeat.

Hughes, 135/175, 68 S. E. 1111; **Bowen**, 135/567, 69 S. E. 115; **Gunter**, 113/18, 38 S. E. 374; **Dasher**, 102/833, 30 S. E. 544; **Lancaster**, 146/82, 90 S. E. 710.

Bar by, of purchase-money claim, as affecting right of action. **Atlanta & C. Ry. Co.**, 105/534, 31 S. E. 452.

Of action ran until date of amendment; prescriptive title to defense.

Bentley, 119/911, 47 S. E. 209.

Line dividing land, error on issues as to **Alexander**, 129/256, 58 S. E. 836.

Lis pendens, doctrine of. **Equitable Securities Co.**, 113/1013, 39 S. E. 434.

Location of land on one or another lot; admission of answer extended to allegation of petition. **Ragan**, 147/241, 93 S. E. 399.

Of lot as platted and defined by grantor, conflict of testimony as to. **Mathis**, 141/601, 81 S. E. 869.

Lost deed on which action based; what proof necessary. **Greer**, 113/120, 38 S. E. 314.

Map of premises sued for, proved to be correct, admissible in evidence for what purpose. **Napier**, 137/243, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013.

Mesne profits accruing only after falling in of life-estate were chargeable to defendant. **Hawks**, 141/423, 81 S. E. 200.

Action lies for, by owner of undivided interest against cotenant holding adversely. **Burney**, 134/141, 67 S. E. 712.

Amendment of verdict as to. Pleading and evidence raised question of. **Paulk**, 143/621, 85 S. E. 867.

Amount, an issue of fact. **Horkan**, 111/126, 36 S. E. 432.

Do not bear interest until demand liquidated. **Fricke**, 124/167, 52 S. E. 65.

Due by tenant in common to cotenant, are not realty, but in nature of a chose in action. **Smith**, 141/637, 81 S. E. 895.

Error immaterial, where verdict is for defendant. **Benning**, 120/734, 48 S. E. 123.

Error to direct verdict as to. **McCarty**, 137/282, 73 S. E. 493; **Graham**, 137/668, 74 S. E. 426. Verdict not to be directed on opinion evidence as to value of. **Hammock**, 146/681, 91 S. E. 57.

How assessed, when defendant holds bona fide under claim of right. **Lee**, 124/539, 52 S. E. 1007. Reduction by taxes paid. **Ib.** 541.

Improvements as set off to; and how apportionable. **Ayer**, 147/715, 95 S. E. 257.

Jurors not absolutely bound by uniform opinion of witnesses as to rental value. **Graham**, 137/668, 74 S. E. 426.

Limited application of statute prohibiting separate suit. **Parker**, 113/1167, 39 S. E. 475.

New trial for inaccurate and incomplete instructions to jury. **Boyett**, 144/109, 86 S. E. 222.

No recovery for more than 4 years before suit. **Taylor**, 109/328, 34 S. E. 674.

Not involved; indefinite plea of expenditures for improvements. **Williford**, 127/786, 56 S. E. 1010.

Not recovered in separate action, after recovery of land by plaintiff. **Neill**, 133/493, 66 S. E. 246.

Period embraced by recovery. **Acme Brewing Co.**, 115/496, 42 S. E. 8.

Prayer for, by praying for value of property taken. **Collinsville Granite Co.**, 123/831, 51 S. E. 666.

Recovered on partition. **Hall**, 146/815, 92 S. E. 536.

Recovery by legal representative; common-law rule not applied. **Rowan**, 121/469, 49 S. E. 275.

Remainderman's recovery of, limited to accrual after falling in of life-estate. **Ayer**, 147/715, 95 S. E. 257.

Muniment void as evidence of title should be objected to when offered; but no basis of recovery or defense. **Hutchinson**, 145/325, 89 S. E. 208.

Nonsuit granted upon failure to submit sufficient evidence to support action. **Priester**, 135/694, 70 S. E. 646.

Not proper where evidence shows plaintiff entitled to part of property in

dispute. **Board of Education**, 128/169, 57 S. E. 359.

Not proper where evidence, though confusing, etc., sufficient to carry case to jury. **Equitable Securities Co.**, 126/231, 54 S. E. 1044.

On failure of evidence as to relationship, etc. **Terry**, 142/224, 82 S. E. 566.

Proper in action of, evidence showing no prior possession or right thereto in plaintiff or his grantors. **Delay**, 133/15, 65 S. E. 122.

Refused if evidence, construed most favorably to plaintiff, makes a prima facie case. **Henry**, 140/477, 79 S. E. 115.

Ouster actual, followed by right of co-tenants to sue, facts amounting to. **Bowman**, 133/49, 65 S. E. 156.

Outstanding title, defendant may show, and thus defeat action. **Raines**, 136/452, 71 S. E. 738, 38 L. R. A. (N. S.) 863, 24 Ann. Cas. 347; **Roberts**, 136/902, 72 S. E. 234; **Wadley Co.**, 130/136, 60 S. E. 836.

As defense without connection of defendant therewith. **Waters**, 119/934, 47 S. E. 216; **Jenkins**, 109/39, 34 S. E. 355.

By deed to secure debt; as defense. **McDonald**, 120/403, 47 S. E. 918.

Overhanging structure, as ground for. **Wachstein**, 128/230, 57 S. E. 511, 11 L. R. A. (N. S.) 917, 119 Am. St. R. 381.

Parties defendant; joinder. **Ramey**, 121/519, 49 S. E. 595. Necessary and proper. **Bower**, 126/36, 54 S. E. 918.

Holders of legal title unnecessary in suit on perfect equity. **McCandless**, 115/968, 42 S. E. 449.

Misjoinder of children with mother as plaintiffs; error to dismiss action on general demurrer. **Lane**, 147/101, 92 S. E. 887.

New plaintiff substituted, action falls. **Suwannee Co.**, 109/597, 35 S. E. 142.

Plaintiff and defendant to equitable action to recover land, pleadings by. **Frost**, 148/840, 841, 98 S. E. 471.

Plaintiff must show connection with lessor named in demise, on whose title action is based. **Gaskins**, 146/766, 92 S. E. 516.

Striking of name by amendment. **Tapley**, 115/111, 41 S. E. 235.

Part of land sued for; recovery of whole not authorized. **Hogg**, 127/296, 56 S. E. 404.

May be recovered, if so identified by evidence as to enable jury to describe it in verdict; not if evidence be vague and indefinite. **McElroy**, 142/37, 82 S. E. 442.

Pleading act of 1893, application of. **Boaz**, 105/228, 31 S. E. 163; **Dodge**, 107/410, 33 S. E. 468.

Answer no disclaimer, and not complying with court rule. **Equitable B. & L. Asso.**, 114/780, 40 S. E. 742.

Possession, as basis of. **Taylor**, 10 A. 107, 72 S. E. 934; **Henry**, 140/477, 79 S. E. 115.

Actual, competency of testimony that person was in. Aliter as to constructive possession—query. **Copeland**, 144/636, 87 S. E. 1034.

Admission of, when required. **Equitable B. & L. Asso.**, 114/780, 40 S. E. 742; **Holmes**, 136/759, 72 S. E. 38.

Admitted by defending against action; no proof of possession necessary. **Paden**, 140/46, 78 S. E. 412.

Adverse; burden of proof. **Harris**, 114/295, 40 S. E. 271.

Adverse; prima facie case for recovery. **Holder**, 119/256, 46 S. E. 93.

Bona fide four years before levy; evidence pertinent to defense. **Rosser**, 102/164, 29 S. E. 171.

Prior, as basis of action. **Justice**, 140/716, 30 S. E. 941; **Horton**, 117/72, 43 S. E. 786; **Watkins**, 118/375, 45 S. E. 260; **Downing**, 126/378, 55 S. E. 184.

Prior, evidence of, did not show actual adverse possession, sufficient as basis of recovery. **Priester**, 135/694, 70 S. E. 646.

Prior; evidence putting defendant on proof of title. No need to allege trespass. **Jackson**, 127/106, 56 S. E. 107.

Possession—(Continued).

Prior, recovery on. Possession when deed made, necessary. *Priester*, 123/375, 51 S. E. 330.

Prior, under gift in parol, as basis of recovery. *Dasher*, 102/830, 30 S. E. 544.

Prior, under claim of ownership, recovery on. *Ellis*, 101/5, 29 S. E. 268.

Prior, alone, recovery on, against one who enters subsequently without lawful right. *Delay*, 133/15, 65 S. E. 122; *Moss*, 126/196, 54 S. E. 968.

Prior, recovery on, by heirs. *Grantham*, 136/17, 70 S. E. 790.

Prior, relied on for recovery; what showing necessary. *Ragan*, 145/320, 89 S. E. 206.

Relinquished; but if animo revertendi, action on prior possession not defeated. *Jackson*, 127/106, 56 S. E. 107.

Right of, essential to recovery. *Graham*, 131/785, 63 S. E. 348.

Under color of title for less than seven years, did not uphold defense. *Ellis*, 147/315, 93 S. E. 895.

Under mortgage as basis of recovery. *Horton*, 117/72, 43 S. E. 786.

Under recorded deed before defendant's entry, as ground for recovery. *Wilcox*, 118/351, 45 S. E. 400.

Practice in ejectment referred to, in ruling on right to amend by substituting plaintiff for use. *Atlantic R. Co.*, 2 A. 89, 58 S. E. 316.

Prescriptive title, failure to prove, in defense. *Bussey*, 104/151, 30 S. E. 646.

Evidence did not support verdict for recovery as against. *Stewart*, 139/70, 76 S. E. 574.

Law of, under color. *Bower*, 126/35, 54 S. E. 918; *Roberson*, 126/175, 54 S. E. 1020.

Recovery on, not allowed on pleading of written chain only. *Thompson*, 134/80, 67 S. E. 446.

Prima facie case, by showing claim by plaintiffs under deed creating life-estate in their father, with remainder in them, that he is dead, and defendant claims under him. *Brinkley*, 126/480, 55 S. E. 187.

For recovery by widow and sole heir of vendee who left no debt, and estate unadministered. *Gatlin*, 135/582, 69 S. E. 913.

For recovery under deed valid on face, though void in fact. *Watkins*, 118/375, 45 S. E. 260.

Prescriptive title by adverse possession under color; nonsuit erroneous. *McAfee*, 144/473, 87 S. E. 392.

Projection underground, of foundation of wall, beyond boundary line; remedy by ejectment. *Wachstein*, 128/229, 57 S. E. 511, 11 L. R. A. (N. S.) 917, 119 Am. St. R. 381.

Proof of title may be confined to that alleged in abstract. Other evidence not objected to may be basis of recovery. *Hester*, 141/832, 82 S. E. 250.

By plaintiff, unnecessary where defendant claims under plaintiff. *Boyett*, 144/109, 86 S. E. 222.

Dispensed with, where both parties by pleading and evidence claimed title from same source. *Spurlin*, 146/420, 91 S. E. 479.

Purchase money, payment of, irrelevant on issue of title. *Norman*, 113/126, 38 S. E. 317.

Ejectment does not lie upon non-payment of. *Graham*, 131/785, 63 S. E. 348.

Railroad built without consent of landowner, his vendee takes subject to the burden. *Green*, 112/849, 38 S. E. 81.

Rights and remedies, when not asserted by ejectment. *Charleston & Ry. Co.*, 105/1, 15, 30 S. E. 872, 70 Am. St. R. 17; *Atlanta & Ry. Co.*, 105/534, 31 S. E. 452..

Purposes, lack of allegation whether land is used for, demurrable specially, not generally. *Yopp*, 148/539, 97 S. E. 534.

Recovery by licensor against transferee of contract to cut and remove timber. *Watters*, 135/804, 814, 817, 70 S. E. 338, 343, 344.

Error in direction of verdict. *McGraw*, 129/780, 59 S. E. 898.

Evidence authorizing, not demanding. *Wright*, 127/366, 56 S. E. 442.

Must be based on strength of plaintiff's title, not weakness of defendant's. **Delay**, 133/15, 65 S. E. 122; **Taylor**, 133/386, 65 S. E. 850. **Ga. Vitriified Brick Co.**, 148/650, 98 S. E. 77; **Roberts**, 136/902, 72 S. E. 234; **Dodge**, 107/410, 33 S. E. 468; **Dugas**, 130/91, 60 S. E. 268. True, in either form of action for land. **Fullbright**, 131/344, 62 S. E. 188; **Sapp**, 131/438, 62 S. E. 529.

Not based on demise laid in name of person dead when action commenced. **Roberts**, 136/904, 72 S. E. 234.

Of greater interest than shown by evidence, unwarranted. **Heatley**, 135/154, 68 S. E. 783.

On legal title as remainderman under will, not obtained. **Peavy**, 131/114, 62 S. E. 47. When not, as grantee of legatee, against another legatee. **Fullbright**, 131/343, 62 S. E. 188.

Remainderman under devise that was void for uncertainty of description could not recover. **Jones**, 142/278, 82 S. E. 626.

Right of, on possession of testator, against grantee of tenant for life. **Brundage**, 105/806, 32 S. E. 133.

Has no cause of action to recover land before death of tenant for life. **Brinkley**, 131/226, 62 S. E. 67.

Rents, issues, and profits, right to, in action to recover possession and to cancel deeds. **Marshall**, 136/543, 71 S. E. 893.

Receiver for, pendente lite, on what grounds in equitable proceeding. **Hunter**, 137/258, 73 S. E. 380.

Liability of creditor secured by deed, who recovered possession, to account for. **Pusser**, 132/282, 283, 64 S. E. 75, 22 L. R. A. (N. S.) 571; **Culver**, 132/296, 64 S. E. 82.

Proof of value required, though no answer filed. **Equitable B & L. Asso.**, 114/780, 40 S. E. 742.

Value exclusive of defendant's improvements, evidence sufficient to find. **Bowman**, 133/49, 65 S. E. 156.

Rescission of contract of sale not effected by bringing action of. **Wells**, 145/17, 88 S. E. 562.

Res judicata, judgment in former suit was not, as to defendant who was dismissed therefrom. **Alderman**, 141/600, 81 S. E. 899.

Judgment adverse to heirs in their action did not bar later suit by administrator. **Buchan**, 142/198, 82 S. E. 548.

Security deed, action lies on, though after execution on judgment. **Parker**, 114/702, 40 S. E. 724.

As basis of action or defense. **Ashley**, 109/658, 35 S. E. 89.

Grantor in, who suffered judgment and eviction, could not recover, though no deed of reconveyance filed before levy and sale and the land. **Glover**, 130/476, 61 S. E. 12.

Plaintiff has no better title than maker of, and carries burden of proof. When title by senior deed prevails over junior. **Hamilton**, 126/28, 54 S. E. 926.

Recovery on. **Marshall**, 143/526, 85 S. E. 691; **Duke**, 116/391, 42 S. E. 722; **Paden**, 140/46, 78 S. E. 412.

Right of grantee in, to recover, and to defend against action by grantor. **Glover**, 130/478, 61 S. E. 12.

Grantee in possession, when subject suit for possession and profits. **Marshall**, 136/543, 71 S. E. 893.

To secure balance of purchase-price, recovery on. **Wells**, 145/17, 88 S. E. 562.

Tender of amounts received by grantee in, unnecessary before bringing action. **Wells**, 145/17, 88 S. E. 562.

Service, entry of, when not admissible to bind defendant by judgment in former action. **Hodges**, 140/569, 79 S. E. 462.

Set-off of improvements; see catchword, **Improvements**.

State, procedure in action by, to recover land. **State**, 119/730, 46 S. E. 872.

Single action lies for distinct lots of land claimed under different title. **Ford**, 132/344, 63 S. E. 1120.

Tenants, this action does not lie between. **Daniel**, 102/181, 28 S. E. 167.

For life, who were partitioners, when could not recover from purchaser from one such who had died. **Watkins**, 130/797, 62 S. E. 32.

In common can maintain, who are ousted by other tenants. **Whitfield**, 140/430, 78 S. E. 1067; **Whigby**, 135/584, 69 S. E. 1114.

In common, decisions as to ejectment between, discussed and distinguished. **Baxter**, 126/372, 54 S. E. 1036.

In common, verdict in action between, when authorized and in legal form. **Whigby**, 135/584, 69 S. E. 1114.

Title, absence of, made immaterial the ground on which finding against excepting party was based. **Jemison**, 147/405, 94 S. E. 244.

Evidence not sufficient to show, in plaintiffs. **Canady**, 141/371, 81 S. E. 207; **Ayer**, 141/378, 81 S. E. 198; **Matthews**, 141/409, 81 S. E. 117.

Insufficient to support recovery, no cause of action. **Chidsey**, 130/218, 60 S. E. 529, 14 Ann. Cas. 975; **Ragan**, 130/475, 61 S. E. 1.

Must be complete at beginning of suit. **Lee**, 138/646, 75 S. E. 1051. Wanting in lessor when action commenced, no recovery on that demise. **Roberts**, 136/904, 72 S. E. 234.

Not relied on by pleading, when not available. **McCandless**, 115/979, 42 S. E. 449.

Prima facie case under sheriff's deed. **Sweeney**, 119/76, 46 S. E. 76, 100 Am. St. R. 159.

Sufficient to support action against disseizor who with his grantor bought with notice of plaintiff's prior purchase.

Mays, 134/870, 68 S. E. 738.

See catchword "Recovery."

Transferee of notes given for land, though having sued on them, could maintain ejectment. **Ga. Mills Co.**, 112/253, 37 S. E. 414.

Undivided interest not recovered unless petition aver of what fractional part it consists. **Roberts**, 112/842, 38 S. E. 109.

Value of land in issue; market value referred to. **McCandless**, 115/968, 42 S. E. 449.

Vendee in contract of purchase could not set up, in defense to action to recover possession, that vendor could not make fee-simple title. **Lightfoot**, 133/766, 66 S. E. 1094.

Venue of action to recover land, and for equitable relief, against parties residing in different counties. **Bird**, 147/50, 92 S. E. 872.

Where land lies partly in two counties **Nolan**, 134/214, 67 S. E. 656.

Verdict, direction of. **Brinkley**, 131/227, 62 S. E. 67; **Hawes**, 131/323, 62 S. E. 227. When error. **Gillespie**, 132/353, 64 S. E. 80; **Bates**, 148/157, 96 S. E. 178; **Roberts**, 146/491, 493, 91 S. E. 675. When no error. **Leathers**, 132/211, 63 S. E. 1118; **Price**, 148/138, 96 S. E. 4; **Hendrix**, 148/164, 96 S. E. 180; **Madden**, 148/294, 96 S. E. 492. For defendant, no error. **Riddle**, 147/387, 94 S. E. 236; **Baxter**, 147/438, 94 S. E. 544. For plaintiff, no error. **Chastain**, 147/622, 95 S. E. 216; **Bell**, 133/6, 65 S. E. 90; **Carrie**, 145/184, 88 S. E. 949. For plaintiff, error. **Henderson**, 147/371, 94 S. E. 251; **Wiseman**, 147/372, 94 S. E. 252; **Brown**, 141/420, 81 S. E. 196; **Mathis**, 141/601, 81 S. E. 869. For defendants, error. **Coogle**, 141/198, 80 S. E. 481.

Election of, where improvements are set off. **Acme Brewing Co.**, 115/496, 42 S. E. 8.

Error in charge as to form of. **Fullbright**, 131/343, 62 S. E. 188.

For plaintiff demanded, where defense of prescriptive title failed by defendant's admission. **Leathers**, 147/443, 94 S. E. 543.

Not embracing finding of value of land and of improvements by defendant, how corrected. **Lee**, 124/539, 52 S. E. 1007.

Required for defendants in. **Barton**, 137/332, 73 S. E. 516.

Supported by evidence. **Mitchell**, 134/383, 67 S. E. 1042.

Too indefinite, not covering issues. **Abbott**, 113/511, 38 S. E. 955.

Too uncertain to support judgment for part of premises. **McCullough**, 106/275, 32 S. E. 97.

Uncertain; for so much land "where dwelling-house now stands." *Lee*, 107/152, 33 S. E. 39.

Unwarranted, for excessive fractional interest. *Crummey*, 114/746, 40 S. E. 765.

Unwarranted, for land sued for, evidence showing right to recover but fractional interest. *Towery*, 113/137, 38 S. E. 302.

Unwarranted on indefinite evidence of width of land. *Cowdery*, 113/981, 39 S. E. 478.

Warrantor of plaintiff vouched into court, bound by judgment. *Ashburn*, 8 A. 566, 70 S. E. 19; *Taylor*, 131/416, 62 S. E. 291.

Widow could not recover, on title in deceased husband who left children. *Malone*, 101/194, 28 S. E. 689.

Right of, to recover in, as sole heir of husband leaving no child. *Owens*, 148/675, 97 S. E. 856.

Will, no need to produce, for executor or administrator to recover. *Lamar*, 113/781, 39 S. E. 498.

Writing off fractional interest, direction as to. *Georgia Iron &c. Co.*, 121/483, 49 S. E. 618.

Writ of possession, holder not a party to suit may not be expelled by, though it assume defendant as sole occupant. *Browning*, 147/400, 94 S. E. 324.

Right to, after final decree. *Hill*, 146/168, 91 S. E. 40.

Stay of, to allow time to purchase or condemn land. *Charleston &c. Ry. Co.*, 105/1, 30 S. E. 972, 70 Am. St. R. 17.

Year's support sold by widow; no recovery by children. *Boozer*, 120/406, 47 S. E. 908.

EJUSDEM GENERIS. See Statutes.

ELBERTON. See Municipal Corporations.

ELECTION. See Ejectment; Eviction; Landlord and Tenant; Railroads.

ELECTION OF REMEDY OR RIGHT. See Actions; Appeals; Bankruptcy, Contracts; Corporations; Criminal Law; Damages; Dower; Equity; Es-

toppel; Evidence; Guardian and Ward; Homestead; Insurance; Judgments; Landlord and Tenant, catchword "Option;" Mortgages; Officers; Pleading; Pledges; Presumptions; Remedies; Trover; Waiver; Wills; Year's Support.

Action ex delicto, when does not prevent action ex contractu. *L. & N. R. Co.*, 8 A. 82, 83, 68 S. E. 617.

Bond for delivery of property, suit on, inconsistent with summary rule against sheriff. *Hand*, 144/272, 86 S. E. 1080.

Creditor with lien on two funds compelled to pursue the one not available to another lienholder. *Moore*, 10 A. 197, 73 S. E. 45; *Hodnett*, 10 A. 668, 73 S. E. 1082. See *Baumgartner*, 10 A. 224, 73 S. E. 519.

Demurrer special, necessary, to require plaintiff to elect between inconsistent causes of action joined in petition. *Central of Ga. Ry. Co.*, 128/785, 58 S. E. 352.

Dismissal by plaintiff, not prevent doctrine of election between inconsistent remedies from applying; commencement, not result of action, determines election. *Board of Education*, 128/157, 163, 57 S. E. 359.

For want of jurisdiction prevented doctrine of election from applying. *L. & N. R. Co.*, 8 A. 82, 83, 68 S. E. 617.

Doctrine of election between inconsistent remedies discussed. *Board of Education*, 128/157, 163, 57 S. E. 359; *L. & N. R. Co.*, 8 A. 82, 83, 68 S. E. 617.

Harm or change of condition of opposite party, not essential to bar by. *Board of Education*, 128/165, 57 S. E. 359.

Joint defendants, election between, joint liability not appearing. *Rome R. Co.*, 101/26, 28 S. E. 429.

Jurisdiction, want of, as affecting. *L. & N. R. Co.*, 8 A. 82, 83, 68 S. E. 617.

Knowledge of facts, as condition of. Facts from which jury could find that plaintiff was charged with notice of sale and receipt of proceeds by executor. *Board of Education*, 128/167, 57 S. E. 359.

Title reservation and mortgage in note, election of remedy under. *Owens*, 8 A. 221, 68 S. E. 1009.

Waiver of tort, and election of remedy ex contractu. *Paulk*, 8 A. 549, 69 S. E. 1085.

ELECTIONS, POPULAR OR PUBLIC.

See *Municipal Corporations; Officers; Roads; Schools.*

Abolishment of city court, statutory provision for, when ineffective. *Cook*, 137/486, 73 S. E. 672.

Act of 1910 furnishes means for; does not itself confer authority to maintain schools by taxation. *Dooly*, 146/689, 92 S. E. 209.

Annexation of territory. *Mayor &c. of Macon*, 110/796, 36 S. E. 247.

Authority to hold, not express but implied from title of statute. *Oglesby*, 121/602, 49 S. E. 706.

Ballot in one county printed in affirmative form, no negative form, not invalidate State election. *Hammond*, 136/314, 71 S. E. 497, 38 L. R. A. (N. S.) 77.

Not to be rejected if voter, before election, removed his disqualification and lawfully had his name put on list of registered voters, though he was not entitled to sign voter's book when he signed. *Drake*, 112/308, 37 S. E. 432.

In substantial accord with statutory form, but not in exact words, when not to be rejected. *DuPre*, 134/316, 67 S. E. 876.

Contest, ballots folded as received, as ground for. *Cole*, 109/183, 34 S. E. 384.

Form of, prescribed by directory and by mandatory statute; effect of variance. *DuPre*, 134/319, 67 S. E. 876.

Bonds, distinct and independent propositions for issuing, must to be submitted for separate vote on each. *Rea*, 130/771, 61 S. E. 707.

For court-house building, not authorized by calling election, where tax levy made and contract entered into. *Pilcher*, 133/497, 66 S. E. 163; *Hogan*, 133/875, 67 S. E. 268.

Issue of, by county; two-thirds vote determined by reference to registra-

tion list, not tally-sheets of last general election. *Floyd County*, 112/794, 38 S. E. 37.

No legal issue of, to retire and take up prior issue, made since constitution of 1877, though two-thirds of qualified voters assent. *Floyd County*, 112/795, 38 S. E. 37.

Number of votes necessary to authorize issue of, where no registration law of force. *Farmer*, 133/95, 65 S. E. 180.

Of municipality, validity of election as to issue of. *Gracen*, 142/141, 82 S. E. 453.

Voted for; issuance and sale not restrained, after judgment of validation, on what grounds. *Holton*, 134/560, 68 S. E. 472, 31 L. R. A. (N. S.) 116, 20 Ann. Cas. 199.

Issue of, by county, assent of voters in election as to; how determined. *Richter*, 146/218, 91 S. E. 35.

Issue of, by municipality; validity of election. *Sewell*, 145/19, 88 S. E. 577.

Issue of; effect of not giving voters opportunity to vote separately as to each purpose. *Holton*, 134/560, 68 S. E. 472, 31 L. R. A. (N. S.) 116, 20 Ann. Cas. 199.

Burden of proof on plaintiffs attacking validity of. *Mabry*, 133/831, 67 S. E. 91; *Ray*, 148/204, 96 S. E. 209.

Calling, power of, in ordinary, not commissioners. *Wells*, 102/53, 29 S. E. 165.

By proper municipal action, presumed from allegations. *Manson*, 131/430, 62 S. E. 278.

Candidate, whether eligible if not qualified as a voter, not decided. *McWilliams*, 128/378, 57 S. E. 509.

Canvass of returns and declaration of result by joint action of managers and city council. *Sewell*, 145/19, 88 S. E. 577.

Certificate and tally-sheets; certified copy as evidence. *Glover*, 122/769, 50 S. E. 956.

Invalid, though based on honest mistake of fact or law. *Crawley*, 108/132, 137, 33 S. E. 948.

Of managers as evidence of right to office. *Scales*, 118/152, 44 S. E. 987.

Choice by voters essential to validity of. No legal election where but one result possible. *County of DeKalb*, 132/736, 65 S. E. 72.

Citizen's remedy where effect of illegal election would be to change his domicile by changing a political subdivision. *Town of Roswell*, 128/43, 57 S. E. 114.

Collateral attack on validity, not allowed in defense of prosecution. *Woodard*, 103/496, 30 S. E. 522.

Combining election as to local taxation for schools with that for trustees of district was irregular. *Wilson*, 143/362, 85 S. E. 198.

Conclusiveness of declaration of result. *Harris*, 128/302, 57 S. E. 305.

Consolidation illegal, after restraining order. *Tanner*, 108/95, 33 S. E. 832.

Mandamus to compel, including omitted precinct. *Tanner*, 108/95, 33 S. E. 832.

Of vote, mandamus to compel, how directed. *Deen*, 106/394, 32 S. E. 368.

Extent of power of managers. *Gilliam*, 122/322, 50 S. E. 137.

Constable, election for, is a State election. *Rose*, 107/697, 33 S. E. 439.

Constitutional amendment of 1908 prescribed added suffrage qualifications for electors. *Tolbert*, 134/292, 298, 67 S. E. 826, 828, 137 Am. St. R. 222.

Ratification of. *Hammond*, 136/313, 71 S. E. 497, 38 L. R. A. (N. S.) 77.

Contest and quo warranto, law as to remedies by. *Coleman*, 131/648, 63 S. E. 41.

Allegations too general. *Paulk*, 117/6, 43 S. E. 368.

As remedy instead of quo warranto, by claimant of office. *Cutts*, 108/620, 34 S. E. 186. See *Crawley*, 108/137, 33 S. E. 948.

As remedy; no equitable interference. *Morris*, 121/752, 49 S. E. 786.

Decision of, is a political, not a judicial function. *Harris*, 128/303, 57 S. E. 305.

Decision of judge of superior court on, final, and not reviewable by cer-

tiorari. *Robertson*, 20 A. 258, 92 S. E. 1027. Judge dismissing certiorari erred in declaring void the judgment complained of. *Ib.*

Duty of judge as to ordering recount of ballots. *McMillan*, 105/496, 30 S. E. 948.

Of liquor election; allegations of petition too indefinite. *Jossey*, 107/828, 33 S. E. 718.

Equitable suit not convertible into, by amendment. *Ogburn*, 123/677, 51 S. E. 641.

Holding over of incumbent until decision. *Scales*, 118/152, 44 S. E. 987.

Jurisdiction of ordinary not controlled. *Tupper*, 104/179, 30 S. E. 624.

Jurisdiction of, whether conferable on superior court. *Ogburn*, 123/677, 51 S. E. 641.

Jurisdiction to try; superior court has none outside of that conferred by statute; whether the legislature can constitutionally give it such jurisdiction, not decided. *Harris*, 128/299, 303, 57 S. E. 305.

Of local option election; duty of ordinary to pass on contest before declaring result. *Drake*, 109/399, 35 S. E. 44.

Ordinary's decision final on (municipal office); and no review by certiorari. *Harris*, 141/687, 81 S. E. 1103.

No mandamus to compel ordinary to hear, on fence elections. *Harris*, 103/816, 30 S. E. 663.

Not remedy; mandamus for candidate ignored by canvassers. *Morris*, 121/752, 49 S. E. 786.

Notice of, to ordinary; what suffices. *Drake*, 112/308, 37 S. E. 432.

Grounds not sufficient to invalidate. *Coleman*, 131/644, 63 S. E. 41.

Not entertained by court of equity. When declaration of result may be restrained. *Tolbert*, 134/294, 67 S. E. 826, 137 Am. St. R. 222.

Petition demurrable. *Lowrey*, 131/320, 66 S. E. 226.

Under local option law. *Drake*, 112/308, 37 S. E. 432.

Ordinary's power to determine,

limited. Judgment based on assumed vote of person illegally deprived of voting, held void. **Simpson**, 141/822, 82 S. E. 291.

Participation in election, as bar to raising question. **Harris**, 128/301, 57 S. E. 305.

Parties to; intervenors not allowed to file counter-contest. **Miller**, 113/347, 38 S. E. 747.

Questions not in the proper scope of a local-option election contest. **Harris**, 128/299, 57 S. E. 305.

Quo warranto instead of. **Howell**, 119/537, 46 S. E. 667; **Hathcock**, 119/973, 47 S. E. 563.

Counting votes and consolidating returns of "fence or no fence" election, questions as to, must be made before ordinary proclaims result. **Heath**, 15 A. 89, 82 S. E. 665.

Must be public, in primary election; violation of this duty, a misdemeanor. **Norton**, 5 A. 596, 63 S. E. 662.

County additional, lawful election to create. **Moore**, 140/854, 79 S. E. 1116.

Petition as a whole was for county election, not district election. **Coleman**, 131/644, 63 S. E. 41.

County commissioners, popular election of; and effect of acquiescence in selection by grand jury. **Brown**, 102/528, 29 S. E. 267.

County line in town, change of, by election under act of 1906, injunction to prevent. **Town of Roswell**, 128/43, 57 S. E. 114.

Change of, when mandamus lies to compel action by ordinary after election. **Manson**, 131/430, 62 S. E. 278.

County site, election as to change of, legally called. **Lee**, 130/45, 60 S. E. 164.

Decision of contest by secretary of State. **Bowen**, 105/459, 31 S. E. 147.

Validity of petition to ordinary, declaration of result, and legislative act. **Vornberg**, 143/111, 84 S. E. 370.

Ballots, and number of votes needed. **Wells**, 102/53, 29 S. E. 165.

295, 67 S. E. 826, 137 Am. St. R. 222.

When ordinary not compelled to call election. **Barrett**, 137/545, 73 S. E. 825.

Proof of votes; certificate of result, admissibility of evidence. **Cutcher**, 105/181, 31 S. E. 139.

Day for, Monday if date fall on Sunday. **Davis**, 116/494, 42 S. E. 764.

Debt, election for incurring; assent of two thirds of qualified voters requisite. **Mayor &c. of Macon**, 122/455, 50 S. E. 340.

Bonded, for creation of, before provision for payment. **Epping**, 117/264, 43 S. E. 803.

Of county or municipality, necessity and validity of election for incurring. **City Council of Dawson**, 106/696, 32 S. E. 907; **Dyer**, 106/845, 33 S. E. 63.

Declaration of result; ordinary's compliance with requirement. **Chamlee**, 115/269, 41 S. E. 691.

Directory provisions, effect of failure to comply with. **Coleman**, 131/649, 63 S. E. 41; **Bramby**, 132/408, 64 S. E. 321.

Dispensary for sale of intoxicating liquors, election as to. **Lowrey**, 131/320, 62 S. E. 226.

Disqualification of voter, not result from not paying interest on taxes for time preceding issuance of execution. **McWilliams**, 128/375, 57 S. E. 509.

Distinct provisions as to schools, at single election. **Brand**, 104/487, 30 S. E. 954.

District or precinct may be described in indictment by colloquial name, instead of by number. **Norton**, 5 A. 587, 63 S. E. 662.

Equitable interference with details and irregularities of, not obtainable; rule and exception. **County of DeKalb**, 132/728, 65 S. E. 72. Equity does not, as general rule, deal with contest of; exception where tax levy attempted. **Coleman**, 131/644, 63 S. E. 41.

Essentials of; how to be held, who to hold, to whom returns made, and who to declare result. **Cook**, 137/489, 73 S. E. 672.

Estoppel of participant in. **Tolbert**, 134/ No estoppel by conduct here. **DuPre**,

134/317, 67 S. E. 876; *Landsdell*, 134/536, 68 S. E. 102.

Exclusion of vote of precinct, not justified by one unlawful ballot. *Gilliam*, 122/322, 50 S. E. 137.

False swearing by managers taking oath to conduct primary elections honestly and in accordance with law; indictment sufficient. *Norton*, 5 A. 586, 63 S. E. 662. Oath not properly administered; indictment insufficient. *Phillips*, 5 A. 597, 63 S. E. 667.

Fraud; misleading statements of managers to voters, when not such as to invalidate. *Mabry*, 133/831, 67 S. E. 91.

In omission of names of voters from lists furnished by registrars; allegation demurrable. *Coleman*, 131/644, 63 S. E. 41.

Freeholder, manager appearing to be, no ground of contest. *Crawley*, 108/136, 33 S. E. 948.

General Assembly, State officer ineligible to election to, but not thereby ousted from first office. *McWilliams*, 130/733, 61 S. E. 721, 14 Ann. Cas. 626.

General election, that held in November for congressman and presidential electors is, within meaning of constitution. *Moore*, 140/854, 79 S. E. 1116.

Illegally held; when no ground for injunction against contractor. *McMaster*, 122/231, 50 S. E. 122.

Ineffective, for failure of legislature to provide adequate and legal method for holding, and for returns and declaration of result. *Pickering*, 146/636, 92 S. E. 74.

Ineligible candidate receiving majority of votes, new election necessary. *Dobbs*, 128/483, 57 S. E. 777, 11 Ann. Cas. 117.

Injunction against calling, under ordinance ultra vires. *Mayor &c. of Macon*, 110/796, 36 S. E. 247.

Against certifying result of election, when granted. *Town of Roswell*, 128/43, 57 S. E. 114; *Tolbert*, 134/292, 67 S. E. 826, 137 Am. St. R. 222.

Against holding, or carrying into effect, proper to prevent accomplishment

of illegal object. *County of DeKalb*, 132/728, 65 S. E. 72.

Denied to contestant. *Tupper*, 104/179, 30 S. E. 624.

Intimidation of voters, allegation as to, insufficient in not giving names and number. *Lowrey*, 131/320, 62 S. E. 226.

Invalidity of law in part did not invalidate election. *Griffin*, 129/698, 59 S. E. 902.

Irregularities did not invalidate. *Chamlee*, 115/271, 41 S. E. 691.

When do not avoid result of. *County of DeKalb*, 132/728, 65 S. E. 72; *Brumby*, 132/408, 64 S. E. 321.

Grave, when do not avoid. *Coleman*, 131/644, 63 S. E. 41.

Not invalidating; non-compliance with legal directions. *Davis*, 116/494, 42 S. E. 764.

Did not ipso facto invalidate. *Wilson*, 143/362, 85 S. E. 198.

Judicial cognizance of result not taken. *Weodard*, 103/498, 30 S. E. 522.

Jurisdiction of question, when not given to courts. *Ivey*, 129/286, 58 S. E. 852.

Justice of the peace, duty to call election to fill vacancy in office of, enforced by mandamus. *Killorin*, 141/524, 81 S. E. 443.

Laches of taxpayers for four years, as bar to equitable relief on account of irregularity in. *Wilson*, 143/362, 85 S. E. 198.

Law to become effective on popular vote, legislature has power to enact. *Coleman*, 131/644, 63 S. E. 41.

List of voters inadvertently omitted from return, not void. *Tanner*, 108/100, 33 S. E. 832.

Local law providing for, not invalid. *Farmer*, 133/94, 65 S. E. 180.

Local taxation for schools, determination of jurisdictional facts for purpose of calling. *Wilson*, 143/361, 85 S. E. 198.

Majority of those voting; meaning of legislative acts. *Chamlee*, 115/268, 41 S. E. 691; *Jacoby*, 115/272, 41 S. E. 611.

Of two thirds, test for determining. *Gracen*, 142/142, 82 S. E. 453.

- Of votes on particular question failed to carry, being less than majority of votes cast on any ticket at same election. **Joe**, 136/158, 70 S. E. 1104.
- Manager's disqualification**, under the code. **Jossey**, 107/831, 33 S. E. 718.
- When not void for. **Slate**, 113/646, 38 S. E. 977.
- Need of conclusive evidence as to. **Crawley**, 108/136, 33 S. E. 948.
- Mandamus** to compel canvass of vote and declaration of result. **Morris**, 121/752, 49 S. E. 786.
- To compel issue of election certificate. **Scales**, 118/152, 44 S. E. 987.
- To require delivery of ballots and lists, and reconsolidation of vote, when denied. **Gilliam**, 122/322, 50 S. E. 137.
- To require managers to meet and consolidate vote. **Glover**, 122/769, 50 S. E. 956.
- Mandatory requirements**, substantial violation of, invalidates. **Coleman**, 131/655, 63 S. E. 41.
- Manner of holding**, registration act not void for not prescribing. **Jacoby**, 115/272, 41 S. E. 611.
- Methods of voters** not inquired into. **Epping**, 117/264, 43 S. E. 808.
- Mistake in declaring result**; municipal authorities could not rescind action. **Akerman**, 118/337, 45 S. E. 312.
- Municipal corporation limits**, election as to extension of, may be provided by legislature; but this is not obligatory. **White**, 134/532, 68 S. E. 103.
- Municipal resolution** for election, too indefinite as to amount and rate of tax; and notice not conforming to law. **Dooly**, 146/689, 92 S. E. 209.
- Non-compliance with law**, when not invalid for. **Jossey**, 107/831, 33 S. E. 718.
- Notice as affected by illegal provision** for payment by taxation. **Oliver**, 124/64, 52 S. E. 15.
- Calling election, regularity of, when not subject to attack. **Farmer**, 133/94, 65 S. E. 180.
- Complaint of defect in, when too late. **Brand**, 104/487, 30 S. E. 954.
- Effect of statutory provision for, as between general and special elections; whether directory or mandatory. **Roberts**, 144/177, 86 S. E. 545.
- Insufficient as to rate of interest. **City of Thomasville**, 122/399, 50 S. E. 169.
- Irregular, election vitiated by. **Brand**, 104/487, 30 S. E. 954.
- Not legally published; not invalidated if electors had actual notice. **Morris**, 121/752, 49 S. E. 786.
- Of amount to be incurred, necessary to validity of election. **City Council of Dawson**, 106/696, 32 S. E. 907.
- Cannot supply adequate essentials for holding, etc., omitted in statute. **Pickering**, 146/636, 92 S. E. 74.
- Not published as required by law; whether persons voting can contest on this ground. **Harris**, 128/301, 57 S. E. 305.
- Reciting passage of order calling, aided by legal presumption, how effective. Dissent in **Ray**, 148/203, 96 S. E. 209.
- Published; objections overruled. **Wimberly**, 116/50, 42 S. E. 478. Sustained. **Wilkins**, 116/359, 42 S. E. 767; **Davis**, 116/491, 42 S. E. 764.
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Of claim under insurance or beneficial certificate. **Lawson**, 136/215, 71 S. E. 149.

Of chose in action in writing, for benefit of prospective corporation, how to be sued on. **Fla. & C. Co.**, 136/411, 71 S. E. 734.

Equitable, of several parts of amount due by railroad for cross-ties. **Brown**, 140/539, 79 S. E. 152.

Attachment and garnishment, when need aid in equity. **Southern Grain Co.**, 127/626, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 119 Am. St. R. 356, 9 Ann. Cas. 437.

Equitable, no provision for issuing. **Tennessee Fertilizer Co.**, 147/588, 95 S. E. 81.

Attorney's fees for bringing fund into court, when not allowed out of the fund. **Buckwalter**, 115/484, 41 S. E. 1010; **Mohr-Weil Lumber Co.**, 109/579, 34 S. E. 1005.

For bringing in fund, additional allowance of, discretion as to. **Morgan**, 101/389, 28 S. E. 857.

Attorney's purchase of judgment or execution from client, presumptively invalid. Burden of proof of fairness, adequacy of consideration, etc. **Stubinger**, 116/399, 42 S. E. 713.

Bankruptcy, when equitable action necessary to protect lien against discharge in. **Philip Carey Co.**, 1 A. 708, 58 S. E. 274.

Exemption set apart in, when not subjected by proceeding in rem. **Richards**, 138/583, 75 S. E. 602.

Bona fide pledgee protected in equity. **Commercial Bank**, 120/74, 47 S. E. 589, 65 L. R. A. 443.

Bona fide purchaser, protection of, as to land bought with proceeds of homestead property. **Weaver**, 101/150, 28 S. E. 118.

Without notice, from one who purchased with notice, protected. So as to second purchaser although with notice. **Purvis**, 144/16, 85 S. E. 1012.

Who pays part before notice of mortgage, entitled to protection to that extent, on appropriate pleading. **Donaldson**, 137/849, 74 S. E. 762.

Equity of, as to improvements made by him on land under defective title. **Mills**, 111/283, 36 S. E. 673, 52 L. R. A. 934.

Rights of, protected. **Richards**, 106/616, 33 S. E. 193.

Mortgagee stands on footing of, and is protected against secret equity, when. **Parker**, 107/650, 34 S. E. 365.

Mortgagee not on footing of, where he did not extend credit on the faith of the property, but took the mortgage as security for a pre-existing debt. **Matthews**, 113/378, 38 S. E. 854.

From one having notice, protected. **Willingham**, 112/421, 37 S. E. 737.

For value from buyer at voidable sale, doctrine as to, when not applied. **Broadhurst**, 137/833, 74 S. E. 422.

At sheriff's sale, who pays purchase-price without notice, protected against an equity. **Johnson**, 114/604, 40 S. E. 787, 56 L. R. A. 933.

Actual payment of all of price, before notice is essential to position as. **Rowe**, 148/817, 98 S. E. 493. And see **Gleaton**, 149/220, 100 S. E. 72.

Business investment on faith of railroad track, when no ground for relief, to one having notice of contract right to remove it. **Southern Ry. Co.**, 135/428, 69 S. E. 550.

Clean hands doctrine, limit of rule as to. **Employing Printers**, 122/509, 515, 50 S. E. 353, 69 L. R. A. 90, 106 Am. St. R. 137, 2 Ann. Cas. 694.

One must come with, applied where injunction sought against misleading trade-mark. **Coleman**, 103/786, 30 S. E. 639.

Party asking relief must come with. Defendant in ejectment not heard to set up that conveyance was made to delay or hinder a creditor. **Tune**, 131/530, 62 S. E. 976.

Plaintiff's want of, as cause for denying relief. **Bank of Doerun**, 148/799, 98 S. E. 467. See **Hall**, 148/812, 98 S. E. 549. Unclean hands prevent relief to one victimized by another whom he aided to defeat a creditor. **Bagwell**, 116/464, 42 S. E. 732. To one who held stock four years and then sought relief against fraud in palming it off on him. **Reynolds Co.**, 116/502, 42 S. E. 796.

Rule that party seeking relief must have, applied to one invoking equitable estoppel. **Deen**, 128/267, 57 S. E. 427. See **Sewell**, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Rule that petitioner must come with, has reference to the transaction complained of. **Brown**, 115/452, 41 S. E. 553, 57 L. R. A. 547, 90 Am. St. R. 126.

Rule that suitor must come with, not contravened where it was sought to enforce only the legal part of a contract tainted with usury. **Wilkins**, 113/55, 38 S. E. 374, 84 Am. St. R. 204.

Complete relief, rule as to granting, where equity has acquired jurisdiction. **Baxter**, 129/463, 59 S. E. 283; **Willingham**, 129/840, 60 S. E. 186.

Given by; equity does nothing by halves. **Latimer**, 119/887, 897, 47 S. E. 322.

Compromise, termination of family controversy sufficient consideration for, in equity. **Belt**, 126/767, 56 S. E. 81.

Considers that done which ought to have been done. Reconveyance treated as correction of wrong. **Bourquin**, 120/115, 47 S. E. 639.

Contempt of court by collusive suit. **Harp**, 108/176, 33 S. E. 998.

Attachment for contempt to compel bidder at receiver's sale to perform. **Smith**, 106/415, 32 S. E. 375.

Contract, non-enforcement of, where consideration so grossly inadequate as to shock the conscience, etc. **Shirk**, 148/500, 97 S. E. 66. See **Contracts**.

Illegal, relief against, in favor of party comparatively more innocent, both parties not being in *pari delicto*. **Roney**, 135/3, 68 S. E. 701.

For parties, court can not make. **Wimpee**, 148/420, 422, 96 S. E. 993.

Illegal, no aid to enforce, or set aside. **Booth**, 132/109, 63 S. E. 907; **Lazenby**, 132/836, 65 S. E. 120.

Executed, consideration illegal or immoral, neither party aided. **Watkins**, 118/372, 45 S. E. 262. Executory, neither party can enforce. *Ib.*

To devise property in consideration of services; how enforced after death of promisor. **Rivers**, 145/103, 88 S. E. 576; **Gordon**, 145/682, 89 S. E. 749.

Substantial compliance with, equitable rule as to. **Henderson Warehouse Co.**, 105/222, 31 S. E. 551.

Without consideration, no equitable relief against, where no insolvency or danger of loss, etc. **Witt**, 140/48, 78 S. E. 467.

Contribution among devisees, right of. **Miller**, 136/428, 439, 71 S. E. 910.

As to redemption of land conveyed by security deed, where grantor subsequently conveyed timber to one and sold his interest in the land to another. **Williams**, 111/857, 36 S. E. 927.

By claimants, petition for decree as to, and for injunction, etc., when not

demurrable. **Chamblee**, 131/554, 62 S. E. 1032.

Jurisdiction of action at law to enforce, without equitable feature. **Watkins**, 148/249, 96 S. E. 338.

Right of, among co-obligors. **Medlock**, 4 A. 368, 61 S. E. 516.

To satisfy lien. **Merchants Bank**, 107/535, 33 S. E. 860.

When not applied, as to liability for taxes, between vendees of separate parcels from insolvent vendor. **Askew**, 114/302, 40 S. E. 256.

Corporation, private or municipal, restrained, at suit of citizen and taxpayer, from pursuing business without charter power. **Keen**, 101/593, 29 S. E. 42.

Directors and stockholders could not maintain equitable action to dissolve, etc., against objection of judgment creditor. **Bank of Soperton**, 142/34, 32 S. E. 464; 142/796, 83 S. E. 782.

Proceeding to dissolve, under statute, not auxiliary to action for liquidation. **Bank of Soperton**, 142/796, 83 S. E. 782.

Assets, equitable remedy of pledgee of stock, for preservation of. **Andrews**, 129/53, 58 S. E. 633, 121 Am. St. R. 188, 12 Ann. Cas. 616.

Creditors had equity superior to that of stockholder who obtained credit. **Fitzpatrick**, 133/332, 65 S. E. 859, 25 L. R. A. (N. S.) 150.

Directors, discretion of, jurisdiction to control. **Jossey**, 102/707, 28 S. E. 273.

Acts *ultra vires*, fraud or mismanagement of officers, etc.; what essential to maintain action by minority stockholder. **Smith**, 147/7, 92 S. E. 519; **Millett**, 147/8, 92 S. E. 515.

Name, right to use of, how protected. **Rome Machine Co.**, 135/17, 68 S. E. 800.

Officers (sole stockholders) liable as trustees for corporate debt, on what facts. **Tatum**, 136/791, 72 S. E. 236, Ann. Cas. 1912D, 216.

Costs taxed half against prevailing party, when not error. **Houston**, 124/104, 52

S. E. 83. Discretion not abused, no reversal of ruling on which party costs shall fall. **Fricker**, 124/167, 52 S. E. 65.

Of receivership, taxes are. Order for payment, on application of purchaser at sale. **Empire Cotton Oil Co.**, 147/618, 95 S. E. 216.

Judge's determination as to, governs, if no abuse of discretion. **Greer**, 138/664, 75 S. E. 1050; **Capital City Co.**, 138/667, 75 S. E. 1040.

Lien creditor participating in receivership litigation, liable for share of. **Garmany**, 124/876, 53 S. E. 669, 110 Am. St. R. 207.

Including entire auditor's fee, may be taxed against either party, in discretion of judge. **Fitzpatrick**, 133/333, 65 S. E. 859, 25 L. R. A. (N. S.) 150.

Equal division of, no cause for reversal. **Greer**, 138/664, 75 S. E. 1050; **Farnsworth**, 147/384, 94 S. E. 220.

Discretion of judge to direct who shall pay. **Torras**, 108/345, 33 S. E. 989; **Boardhurst**, 137/834, 74 S. E. 422; **Macon Savings Bank**, 107/780, 33 S. E. 679; **Davidson**, 106/799, 32 S. E. 867.

Discretion of judge as to party to be taxed for, not properly exercised. **Hamilton**, 103/795, 30 S. E. 248.

Extent of exercise of discretion. **Peppers**, 143/230, 234, 84 S. E. 477.

Attorney's fee, when not allowed as. **Mohr-Weil Lumber Co.**, 109/579, 34 S. E. 1005.

Apportionment of, among parties on both sides, when no abuse of discretion. **Lowe**, 143/388, 96 S. E. 1001.

Covenants restrictive, enforceable though no irreparable damage from breach. Lease contract. **Aas G. Candler Inc.**, 148/188, 96 S. E. 226. Contract of employment. **Shirk**, 148/500, 97 S. E. 66.

Court of equity, always open; limitation of the principle. **Booth**, 131/750, 63 S. E. 502.

Cotenant's claim for improvement made bona fide is equitable charge, not title

to land. **Helmken**, 138/457, 75 S. E. 586, 45 L. R. A. (N. S.) 738.

Dedication of parks, right of lot-owners to relief under claim of. **East Atlanta Land Co.**, 138/380, 75 S. E. 418. **Delay** plaintiff in execution, equity will not, for adjustment of equities between purchasers of property subject to levy. **Chamblee**, 131/557, 62 S. E. 1032.

Discretion to require suitor to intervene, if he sue, when properly exercised. **Stephens**, 120/1082, 48 S. E. 433.

Of county authorities not interfered with by court of equity unless abused. **Dyer**, 132/445, 64 S. E. 475.

Of county and municipal officers not usually interfered with. **Mayor &c. of Gainesville**, 147/345, 94 S. E. 247; **Merchants Bank**, 147/366, 94 S. E. 229, L. R. A. 1918B, 1122.

Do equity, he must, who would have. **Echols**, 140/679, 79 S. E. 557. Rule explained and applied. **C. & W. C. R. Co.**, 105/21, 30 S. E. 972. Defense setting up this rule, when not effective. **Beach**, 101/357, 28 S. E. 110.

Offer to, by tender of payment, when essential to relief against fraud and usury. **Craft**, 135/521, 69 S. E. 742.

Tender of amount due, as a prerequisite to relief. **Bigham**, 148/488, 97 S. E. 407.

By paying or tendering amount due. **Patterson**, 146/364, 91 S. E. 116; **Matthews**, 146/732, 92 S. E. 52.

Plaintiff must, by paying into court sum admitted to be due, where he prays relief from unjust levy for sum due in part. **Wilkinson**, 119/557, 46 S. E. 620.

Relief conditioned on plaintiff's doing full and complete equity to his adversary. **Glover**, 133/65, 65 S. E. 147.

Not applied to defendant as to a purely legal right relied on to defeat plaintiff, though applicable as to relief sought by cross-bill. **Garbutt**, 128/269, 57 S. E. 495, 13 L. R. A. (N. S.) 58.

Equities between parties, adjustment of, when proper, without compelling delay.

Pusher, 132/285, 64 S. E. 75, 22 L. R. A. (N. S.) 571.

Escheat not declared by court of equity.

Duggan, 101/762, 29 S. E. 19.

Estates; error in decree for sale and division. **Phinizy**, 136/522, 71 S. E. 896.

Estoppel not raised against partner who could have known that copartner was misapplying assets to pay individual debt. **Murphey**, 122/715, 722, 50 S. E. 1004.

When does not arise. **Piedmont Mills**, 131/130, 62 S. E. 52; **Hutcheson**, 131/268, 62 S. E. 189; **Potts**, 131/203, 62 S. E. 77; **Kinderland**, 131/456, 62 S. E. 582.

As to plaintiffs who had been compensated in part for loss of trust fund converted. **Shackelford**, 130/858, 61 S. E. 984.

Available by plea. **McCall**, 120/661, 48 S. E. 200.

By partition of land. **Watkins**, 130/798, 62 S. E. 32.

When grantee in deed based on immoral consideration can not invoke. **Deen**, 128/265, 57 S. E. 427.

By oral promise to convey land to wife, that she may obtain loan on it. **Clark**, 122/275, 50 S. E. 108.

Execution sale after death of defendant in fi. fa., and before administrators appointed, when not set aside. **Hudgins**, 116/273, 42 S. E. 489.

Extra compensation to executor, when allowable by court of equity. **Adair**, 136/1, 70 S. E. 578.

Fiduciary can not acquire, from purchaser at tax sale, title to property on which it was his duty to pay taxes. **Bourquin**, 120/115, 47 S. E. 639.

Follows the law. **Perkins Lumber Co.**, 117/396, 43 S. E. 696; **Bowen**, 130/31, 60 S. E. 174, 124 Am. St. R. 164. Rule applied to statute of limitations. **Moore**, 103/524, 30 S. E. 535.

Forfeiture or penalty, not allowed, though stipulated for. **Lytle**, 122/459, 50 S. E. 402.

Abhorred in equity. **Glover**, 133/65, 65 S. E. 147.

Relief against. **Equitable Loan Co.**, 117/599, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177.

Full and adequate relief in one action with proper parties. **Morgan**, 148/123, 95 S. E. 986. Full justice administered, parties and subject-matter being before the court. When this doctrine not applicable. **Bowen**, 130/36, 60 S. E. 174, 124 Am. St. R. 164.

Gift parol, of land, followed by erection of improvements, unenforceable where impossible to ascertain to what part of land the gift applied. **Heidt**, 115/965, 42 S. E. 263.

Incomplete, equity will not aid donee, when. **Steele**, 115/929, 42 S. E. 253, 59 L. R. A. 129.

Enterprise or lottery, no aid to enforce promise to pay prize in. **Standridge**, 148/283, 96 S. E. 498.

Guarantor's assets not seized before breach, though he will waste and be insolvent. **Guilmartin**, 101/565, 29 S. E. 189.

Heirs can not have both land and the proceeds of its sale. **Battle**, 116/218, 42 S. E. 347.

Homestead property sued for in equity, effect given to equitable rights of defendant, though a wrong-doer. **Taylor**, 109/335, 34 S. E. 674.

Improvements by vendee, on land held under bond for title, where no purchase money paid, equities of parties and creditors in fund in court from. **Bradwell**, 103/242, 29 S. E. 756.

On land of another by railroad company, equities of parties where landowner resorted to equitable remedy. **C. & W. C. R. Co.**, 105/21, 30 S. E. 972.

On land by one holding under defective title, equitable right to compensation for. **Mills**, 111/283, 36 S. E. 673, 52 L. R. A. 934.

Indorsee of note for illegal debt of town not relieved. **Town of Wadley**, 124/356, 52 S. E. 335.

Indorser's right in equity, to compel payment of note due but not sued on. **Cooper**, 132/536, 64 S. E. 650.

Innocent parties, rule as to which of two must suffer. *Burch*, 125/157, 53 S. E. 1008.

Loss falls on him who put it in power of third person to inflict injury. *Newsome*, 146/139, 90 S. E. 855; *Young*, 11 A. 344, 75 S. E. 344. A case within the rule. *Summerford*, 126/158, 54 S. E. 1025.

One putting it in power of agent of the other to defraud must suffer. *Pursely*, 122/364, 50 S. E. 139. See *Austin*, 122/440, 50 S. E. 382.

Innocent purchaser from grantee in escrow deed, when not protected as against innocent grantor. *Dixon*, 102/467, 31 S. E. 96.

In pari delicto, no relief to either party. One under duress not so treated. *Jordan*, 143/146, 148, 84 S. E. 549, L. R. A. 1915D, 1122; *Glennville Investment Co.*, 134/572, 68 S. E. 301. Compare *Lane*, 134/623, 68 S. E. 469.

Principle discussed. *Equitable Loan Co.*, 117/603, 673, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177.

Doctrine not applied against former member of illegal combination, who now seeks relief against it. *Employing Printers*, 122/509, 50 S. E. 353, 69 L. R. A. 90, 106 Am. St. R. 137, 2 Ann. Cas. 694.

Insurance certificate, equitable interest of beneficiary in, who by contract pays assessments. *Royal Aranum*, 143/75, 84 S. E. 428.

Interest rate in ascertaining present value of notes. *Jones*, 114/393, 40 S. E. 248.

Law prevails where equities are equal. *Foster*, 121/677, 49 S. E. 865.

Leave to sue receiver instead of intervening, when refused. *Stephens*, 120/1082, 48 S. E. 433.

Lien, equitable, warehouseman had none on proceeds of part of stored property damaged by fire, for expense of removing debris of remainder. *Sav. Rice Mill Co.*, 103/833, 30 S. E. 952.

Equitable, when recognized. *Atlanta Banking Co.*, 115/62, 41 S. E. 247.

For proportion of cost of party-wall enforced against realty, under cov-

enant. *Horne*, 142/489, 83 S. E. 204, Ann. Cas. 1916B, 1212.

By transfer of notes secured by deed. *Steed*, 136/696, 71 S. E. 1116.

For misapplied trust fund, denied. *Ober*, 118/397, 45 S. E. 382, 98 Am. St. R. 118.

Not created by mere deposit of insurance policy and advance of money to pay premiums, which is charged to account of insured. *Johnston*, 120/767, 48 S. E. 373.

Where description in mortgage failed to cover land intended. *Carter*, 104/576, 31 S. E. 407.

Of mortgage on proceeds of insurance policies covering stock of goods, what necessary to maintain. *Robinson*, 108/562, 34 S. E. 147.

Equitable intervention to keep outstanding lien on property, to prevent failure of justice, or extinguishment of lien by title. *Bearden*, 101/169, 28 S. E. 678.

Preservation of liens on receivership; when no priority to judgment in action begun before receiver appointed. *Lang*, 101/343, 28 S. E. 860.

Merger of plaintiff's demand in judgment under proceeding ancillary to common-law remedy; doctrine not applied. *Conley*, 102/753, 29 S. E. 710.

Of mortgage in security deed did not result, grantee not so intending. *Ferris*, 110/102, 35 S. E. 347.

Intention as affecting application of doctrine of. *Woodside*, 113/879, 39 S. E. 400, 84 Am. St. R. 267.

Military corporation disbanded, members of, had no right to control its property. *Cummings*, 108/402, 33 S. E. 919.

Modern doctrine, of equity as to following trust property or its proceeds. *Ober*, 118/398, 45 S. E. 382, 98 Am. St. R. 118.

Mortgage, deed void as title not treated as. *Beach*, 101/366, 28 S. E. 110.

Equitable claim to proceeds of sale of mortgaged property, by assignee of note secured by unforcedclosed mortgage. superior to claim based on junior mort-

gage foreclosed. **National Bank**, 110/692, 36 S. E. 265.

Notes not mature when suit filed on matured ones, what necessary to obtain judgment on. **Keen**, 116/728, 42 S. E. 1022.

Notice of secret equity of vendor, when not imputed to vendee by knowledge of his agent. **Boyd Lumber Co.**, 146/794, 797, 92 S. E. 534.

Of equity by possession of vendor of land, chargeable to purchaser from his vendee. **Jordan**, 143/143, 149, 84 S. E. 549, L. R. A. 1915D, 1122. See **Notice**.

Constructive, is doctrine of equity. **Peoples Bank**, 116/829, 43 S. E. 269, 94 Am. St. R. 144.

Opposing interests becoming vested in one person, suit becomes a nullity subject to be stricken on motion. **Harp**, 108/168, 33 S. E. 998.

Owely of partition, doctrine as to lien for. **Brigham**, 113/812, 39 S. E. 309.

Partnership terminated pending suit, amendment setting up breach of contract by partner was new cause. **Pattillo**, 104/301, 30 S. E. 788.

Realty treated as personalty and assets of firm. **Ferris**, 110/102, 35 S. E. 347.

Realty, how treated in. **Taylor**, 120/706, 48 S. E. 203; **Bank**, 120/944, 48 S. E. 393.

Insolvent, partner solvent, administration of assets. **Johnson**, 102/357, 30 S. E. 507.

Dissolved, receivership for, though no allegations of fraud or insolvency. **Bennett**, 108/466, 34 S. E. 156.

Dissolution and accounting, petition for, an equitable proceeding. **Smith**, 135/582, 69 S. E. 1110.

Debts paid from fund in receiver's hands before claim of partner. **Bishop**, 138/738, 739, 76 S. E. 63.

Realty, when heirs of deceased partner compelled to convey legal title to his interest in. **Bank**, 120/944, 48 S. E. 393.

Debts, partner's remedy to compel application of assets sold to copartner,

to payment of, **Dyer**, 138/159, 74 S. E. 1030.

Payment, time being of essence of agreement as to, no relief against want of timely tender, where no fraud or other sufficient reason. **Roland**, 139/825, 73 S. E. 249.

Of balance due on stock not required of transferee without notice. **Massengale**, 148/97, 95 S. E. 975.

Application of payments by lienholder, as affecting rights of other creditor. **Peoples Bank**, 116/833, 43 S. E. 269, 94 Am. St. R. 144.

Preference not given judgment rendered after receiver appointed, on suit begun before. **Lang**, 101/343, 28 S. E. 860.

Principles of equity applied in trover suit defended by bona fide pledgee. **Commercial Bank**, 120/74, 78, 47 S. E. 589, 65 L. R. A. 443.

Ratification of unauthorized disposition of property by trustee under void trust deed; when not decreed. **Clarke**, 113/1074, 39 S. E. 437.

Reconveyance of property in dispute, on payment of money advanced thereon, when proper. **Hughie**, 105/371, 31 S. E. 109.

Redemption under security-deed, where grantee is in possession of the property; time in which grantor may redeem. **Gunter**, 113/18, 38 S. E. 374.

Of land conveyed by security deed; equities where grantor made subsequent conveyance of timber on the land to one, and sold interest in the land to another, **Williams**, 111/857, 36 S. E. 927.

Refund of money paid for license, on ceasing business, when not required in conscience. **City of Fitzgerald**, 130/554, 61 S. E. 227.

Rents, receiver for, pending ejectment suit. **Vizard**, 117/67, 43 S. E. 426.

Of incumbered property, incumbrancer's equitable claim on. **Wilkins**, 113/32, 56, 38 S. E. 374, 84 Am. St. R. 204; **Fisher**, 113/851, 39 S. E. 305.

Liability for, when not limited to amount actually collected by agent or trustee. **Fricker**, 124/166, 52 S. E. 65.

Restitution of that to which plaintiff legally entitled, unnecessary, before maintaining petition. *Taylor*, 138/41, 42, 74 S. E. 694.

Offer of, essential to relief. *Echols*, 140/679, 79 S. E. 557.

Restoration before setting aside sale, when not required. *Collier*, 137/658 667, 74 S. E. 275, 26 Ann. Cas. 1913A, 1110.

Return of money received by infant under his contract, when not required in order to disaffirm at majority. *White*, 129/508, 59 S. E. 228, 121 Am. St. R. 228.

Secret equity. *Scarborough*, 127/257, 56 S. E. 293.

Of daughter, when purchaser bona fide from mother is protected from. *Manning*, 135/597, 69 S. E. 1126.

Of beneficiaries of trust created by will, when does not prevail against purchaser bona fide. *Peavy*, 131/105, 62 S. E. 47.

Setting aside sale and recovering property while retaining proceeds, not allowed. *Broadhurst*, 137/840, 74 S. E. 422.

Sheriff who extended credit to bidder, and had to pay the sum bid, acquired no equity to have title decreed to him. *Anderson*, 112/66, 37 S. E. 93.

Sale by, illegal and void, set aside without tender of amount due lender of money. *Benedict*, 122/412, 50 S. E. 162.

Tender unnecessary, by owner of property seeking injunction on void sale of realty under excessive levy. *Forbes*, 102/49, 28 S. E. 915.

Less than the amount claimed, adjudication that a sum greater than amount tendered but less than amount claimed be paid, either party could have decree entered. *Guernsey*, 113/898, 39 S. E. 402, 84 Am. St. R. 270.

Effect of inducing delay in. *Stoddard*, 139/743, 78 S. E. 116.

Before suit, when excused by declaration or conduct amounting to a pre-refusal. *Miller*, 139/29, 76 S. E. 585.

As prerequisite to relief in equity. *Clarke*, 113/1074, 39 S. E. 437.

Action maintainable without, to set aside security deed and recover possession of land. *Coates*, 142/239, 82 S. E. 649.

Title, right of debtor to decree evidencing, on payment. *McKinney*, 135/160, 68 S. E. 1095.

Perfect equity constituting, between vendor and vendee. *Lee*, 138/646, 75 S. E. 1051.

Perfect equity acquired by full payment of price and entry into possession, though deed invalid. *Wall*, 143/417, 85 S. E. 325.

Legal, prevails where equities are equal; applied as between assignee of chose in action who paid value for it and one taking collateral for pre-existing debt. *Foster*, 121/677, 49 S. E. 865.

Equitable, under parol purchase of land and payment or tender of price. *Grace*, 129/638, 59 S. E. 811.

Equitable, subordinate to title acquired by purchaser bona fide from possessor with apparent legal title. *Riddle*, 147/387, 94 S. E. 236.

Equitable, recovery on. *Thomas*, 115/11, 41 S. E. 269; *McCandless*, 115/968, 42 S. E. 449.

Equitable, on paying price and taking possession; burden of proof. *Mays*, 134/870, 871, 68 S. E. 738.

Equitable, not result from placing improvements on faith of gift, after death of donor. *Kemp*, 144/717, 87 S. E. 1030.

Equitable, from parol exchange of land with surrender of possession; when superior to legal title conveyed to another by the other party to the exchange. *Baldwin*, 117/827, 45 S. E. 216.

Equitable, by parol transfer of land and performance of consideration. *Kemp*, 144/717, 87 S. E. 1030.

Acquired by purchaser bona fide, under quitclaim deed, rulings as to. *Marshall*, 136/548, 71 S. E. 893.

Acquired by compliance with contract by furnishing information, services, etc. *Swift*, 138/229, 232, 75 S. E. 8.

Title—(Continued).

To proceeds of insurance policy, issue as to, settled adversely to trustee for creditors. **Johnston**, 120/767, 48 S. E. 373.

To property seized under liquor law. **Bernstein**, 148/110, 353, 96 S. E. 1, 866; **Gunn**, 148/137, 96 S. E. 2. Cf. **Shrouder**, 148/378, 881.

Usury in mortgage; power of sale not restrained without offer to do equity by tendering principal and lawful interest. **Moseley**, 106/601, 32 S. E. 638.

In contract, not bar equitable relief to one seeking to enforce the contract only as to the principal and lawful interest. **Wilkins**, 113/55, 38 S. E. 374, 84 Am. St. R. 204.

Cancellation of deed for, without payment or tender of principal and interest. **Beach**, 101/368, 28 S. E. 110.

Vendee's promise to pay vendor's debt to third person, not enforceable beyond rights of vendor. **Union City Co.**, 145/730, 89 S. E. 822. Vendee's equity from payment of purchase-money, recovery on. **Thomas**, 115/11, 41 S. E. 269. Vendor's and vendee's equities where improvements on realty sold are burned before vendor is in position to convey title and before vendee obtains possession. **Phinizy**, 111/346, 36 S. E. 796, 50 S. E. 680, 78 Am. St. R. 207.

Vested legal rights not interfered with in equity. **Tillman**, 104/692, 30 S. E. 949.

Volunteer, rule that equity will not interfere to relieve. **Steele**, 115/933, 42 S. E. 253, 59 L. R. A. 129.

Wager, money or property delivered in pursuance of, recoverable. In pari delicto doctrine not applied. **Quillian**, 122/58, 49 S. E. 801.

2. JURISDICTION AND REMEDIES.

(1) Generally.

Action property brought in equity to obtain decree in rem, pending bankruptcy

proceeding. **Bowen**, 130/32, 60 S. E. 174, 124 Am. St. R. 164.

Administration of estates, jurisdiction of, concurrent with that of ordinary. **Morrison**, 147/465, 94 S. E. 569; **Strickland**, 147/494, 94 S. E. 766. Cf. **Hobby**, 149/176, 99 S. E. 624; **McKinney**, 149/422, 100 S. E. 375; **DeVane**, 149/783, 102 S. E. 145.

Jurisdiction of, not drawn from county of decedent's residence, on petition of heirs, etc. **Smith**, 146/615, 91 S. E. 779.

Ancillary proceeding does not lie without county of residence of defendant not a party to original action. **Bishop**, 138/771, 76 S. E. 89.

Jurisdiction of, where action pending. **Malsby**, 127/728, 56 S. E. 988. Ancillary relief, jurisdiction to administer, fixed by power to give judgment for alimony. **Parker**, 148/196, 96 S. E. 211.

Appeal, superior court can not administer equitable remedies on. **Maloy**, 134/433, 68 S. E. 80.

Attaching creditors, when not compelled, by one equitable suit, to contest issue whether property subject. **Southern Book Dep.**, 135/733, 70 S. E. 569.

Bankruptcy, jurisdiction of court of, in equity, denied; it is not inherent and general. **Wikle**, 133/269, 65 S. E. 577. Remedy of creditor with waiver, to subject bankrupt's exemption before discharge. **Brandt**, 146/649, 92 S. E. 53; **Bell**, 120/628, 48 S. E. 150.

Bill of peace, petition in nature of, when not maintainable. **Ray**, 125/509, 54 S. E. 356.

Bond of building contractor, action by obligee in, against contractor, surety and claimants of liens, when maintainable. **Massachusetts Bonding Co.**, 137/693, 73 S. E. 1053.

To answer decree, one interested in the property has remedy on. **Claffin Co.**, 106/282, 32 S. E. 108.

Bond for title, administrator of obligee in, allowed to maintain action for sale of land, account of rents, etc. **Streetman**, 133/760, 66 S. E. 883.

Suit to fix implied trust in favor of heir of obligee in, not maintained. **Walker**, 104/357, 30 S. E. 867.

Chambers, jurisdiction of proceeding in. **Peavy**, 131/104, 62 S. E. 47; **Turner**, 131/444, 62 S. E. 587; **Morehead**, 131/807, 63 S. E. 507; **Heath**, 117/861, 44 S. E. 13; **Mitchell**, 117/961, 44 S. E. 17.

Proceeding at term, not at chambers, shown. **Richards**, 106/615, 33 S. E. 193.

Chancellor's powers and duties as to estates of wards in chancery. **Richards**, 106/623, 33 S. E. 193.

Charter of corporation, no power in court of equity to accept voluntary surrender of. **White**, 134/274, 67 S. E. 716.

Circuitry and multiplicity of actions, when equity interferes to restrain. **Gray Co.**, 122/350, 50 S. E. 164. See **Bunn**, 122/833, 50 S. E. 914.

City court cannot grant affirmative equitable relief; may entertain equitable defenses. **Hanesley**, 147/86, 93 S. E. 879; **Shipp**, 147/711, 95 S. E. 251; **Ragan**, 123/14, 50 S. E. 951; **Wright**, 117/501, 43 S. E. 700; **Ehrlich**, 117/882, 45 S. E. 279; **Fordham**, 117/884, 45 S. E. 264; **Pound**, 119/905, 47 S. E. 218; **Southern Grain Co.**, 127/631, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 119 Am. St. R. 356, 9 Ann. Cas. 437. Such as reformation of contract, etc. **DeVane**, 133/472, 66 S. E. 245.

Can try equitable defenses; not always afford equitable relief. **Moore**, 101/94, 28 S. E. 836.

Could not adequately administer remedies on issues arising on administrator's bond. **American Bonding Co.**, 144/448, 87 S. E. 411.

Equitable defenses in, when plaintiff estopped from objecting that court had not jurisdiction to entertain. **Ferris**, 103/544, 30 S. E. 353.

Equitable plea entertained in, when. **House**, 125/645, 54 S. E. 735; **House**, 123/784, 51 S. E. 722.

Equities authorizing injunction against action in, because of want of V. II—34.

jurisdiction to grant full relief. **Butler**, 128/333, 57 S. E. 715; **Butler**, 128/431, 57 S. E. 764.

Power of, to entertain equitable defenses. No power to give affirmative relief by way of set-off. **Jesse French Co.**, 114/343, 40 S. E. 292; **Hecht**, 114/921, 41 S. E. 74.

Remedy in, when adequate, without resort to equity. **Rucker**, 133/720, 66 S. E. 917.

Jurisdiction of equitable plea, extent of. **Burnett**, 124/543, 544, 52 S. E. 927.

Jurisdiction of, as to equitable defenses. **Gentle**, 105/406, 31 S. E. 544. Claim interposed to levy; jurisdiction of equitable petition against claimant. **Thomason**, 129/444, 59 S. E. 236.

Injunction against trial of, that whole controversy may be tried in. **Goodwynne**, 116/902, 43 S. E. 275.

Is intervention of equitable nature. **Ford**, 112/851, 38 S. E. 373; **Hollinshead**, 128/13, 57 S. E. 79; **Douglas**, 146/343, 91 S. E. 48.

In forma pauperis, when enjoined and receiver appointed to hold land and rents, though claimant was a non-resident. **Dawson**, 109/389, 34 S. E. 668.

Collateral matters not within scope of original proceeding, jurisdiction not extended to. **Vason**, 102/540, 29 S. E. 456.

Collusion and conspiracy to defeat collection of debt by enforcing security deed; petition not demurrable. **Clark**, 122/275, 50 S. E. 108.

Compromise or settlement by receiver, equitable jurisdiction of court to authorize. **Lamar**, 141/228, 242, 80 S. E. 1085.

Concealment of material facts, as ground for relief. **Oliver**, 118/362, 45 S. E. 232.

Concurrent jurisdiction with court of ordinary in administration of estates of decedents. **West**, 130/360, 60 S. E. 859. Retained by court first assuming, unless good reason for equitable interference. **Morrison**, 147/465, 94 S. E.

569. Cf. *Strickland*, 147/494, 94 S. E. 766. To set aside judgment for fraud. *Anderson*, 147/455, 94 S. E. 574, L. R. A. 1918B, 894. *Albright*, 147/492, 94 S. E. 561. See *Ellis*, 147/608, 95 S. E. 4; *Shipp*, 147/711, 95 S. E. 251.
- Conspiracy to defraud creditors**, sufficiency of allegations as to, as basis for equitable relief. *Ernest*, 107/61, 32 S. E. 898.
- To defraud widow and children of intestate, between his mother and his administrator. *Kelly*, 147/741, 95 S. E. 287.
- Contract not expressed in the writing**, party entitled to relief who was unable to read. *Carpenter*, 116/674, 42 S. E. 1016.
- Performable in other State, superior court of defendant's residence has jurisdiction of suit on. *Harris*, 136/47, 70 S. E. 869.
- Controversies several**, adjustment of, in one proceeding. *Chamblee*, 131/554, 62 S. E. 1032.
- Correction of error in description of land in bond for title or deed**. *Long*, 133/691, 66 S. E. 894.
- Covenant**, remedy on breach of, to settle unliquidated damages, where no insolvency, non-residence, etc. *Baker*, 135/628, 70 S. E. 239.
- Conveyance fraudulent as against creditors**; equitable relief. *Ernest*, 107/61, 32 S. E. 898.
- Corporation**, jurisdiction to prevent, from violation of charter rights of minority stockholders. *Macon Gas. Co.* 143/398, 85 S. E. 112.
- Creditor by note without lien**, when equitable relief denied to. *Cunningham*, 135/249, 69 S. E. 101; *McWilliams-Rankin Co.*, 135/424, 69 S. E. 554.
- Petition of, against fraudulent debtor lies; but remedies of injunction and receiver denied, if legal remedy be available. *Carstarphen*, 124/544, 52 S. E. 598.
- Petition of, attacking debtor's conveyance as fraudulent, etc., how far sustainable. *Maynard*, 138/549, 75 S. E. 583; *Shepherd*, 138/555, 75 S. E. 585.
- Remedy in equity where debtor has obtained goods by fraud. *Bacon*, 117/207, 43 S. E. 482; *Mashburn*, 117/567, 44 S. E. 97.
- Remedy to subject debtor's equitable estate (devise or legacy), when available. *Colclough*, 143/336, 85 S. E. 107.
- Suit by, was not an equitable proceeding to subject assets in hands of debtor's fraudulent grantee. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.
- With two funds available to satisfy his debt, rights of other creditors against. *Earnest*, 115/301, 41 S. E. 640.
- Creditors in one proceeding may attack sale by debtor as fraudulent**, and obtain judgment. *Booth*, 122/333, 50 S. E. 173.
- Without lien not entitled, as a rule, to extraordinary relief. *Ross*, 148/147, 96 S. E. 1; *Coolecwahee Co.*, 148/211, 96 S. E. 131.
- Priorities among**, in distribution of assets of insolvent debtor; equitable principles applied. *Rumble*, 123/299, 51 S. E. 420.
- Petition of, to subject equitable assets of insolvent corporation, good on demurrer. *Harp*, 108/168, 33 S. E. 998.
- Petition of, retained, if it contains grounds for intervention by court of, though not up to requirements of trader's act. *Reynolds*, 118/254, 45 S. E. 235.
- Petition, dismissal of; those not actual parties need not be consulted as to. *Rumble*, 123/299, 51 S. E. 420.
- Petition maintained, though petitioners did not represent one third of unsecured indebtedness. *Rodgers*, 112/624, 37 S. E. 877.
- Suit by, where corporation not legally organized; equitable proceeding necessary, when. *Rozar*, 14 A. 13, 80 S. E. 24.
- Equitable remedy of, where agreement for composition with debtor is void for misrepresentation. *Burgess*, 128/428, 57 S. E. 717.

Criminal or quasi-criminal offenses, no jurisdiction to restrain prosecution for, save in exceptional cases. Facts made case within the rule, not the exception. *Starnes*, 139/531, 77 S. E. 381.

Offense, injunction against committing, by insolvent persons. *Jones*, 110/203, 35 S. E. 375.

Prosecution not prevented by injunction. *Paulk*, 104/24, 30 S. E. 417.

Statute or town ordinance, constitutionality or validity of, not attacked by equitable petition. *Paulk*, 104/24, 30, S. E. 417.

Laws not restrained, as a general rule. *Mayor &c. of Savannah*, 145/578, 89 S. E. 690.

When equity has no jurisdiction to interfere. *O'Brien*, 105/732, 31 S. E. 745; *Mayor of Moultrie*, 109/370, 34 S. E. 600; *City of Bainbridge*, 111/758, 36 S. E. 935.

Prosecution, when not ground for equitable relief. *Salter*, 125/96, 54 S. E. 74.

Rule as to non-interference of court of equity. *Ga. Ry. &c. Co.*, 129/576, 59 S. E. 296; *White*, 129/582, 59 S. E. 299. Exception to rule of non-interference with. *Ga. R. Co.*, 118/486, 45 S. E. 256. Limitation of rule that equity will not interfere. *Hasbrouck*, 127/220, 56 S. E. 241. Rule and exceptions to the rule. *Mayor &c. of Shellman*, 134/29, 67 S. E. 438, 27 L. R. A. (N. S.) 452; *Mayor &c. of Jonesboro*, 134/190, 67 S. E. 716; *Baldwin*, 147/28, 92 S. E. 630; *Powell*, 147/619, 95 S. E. 214; *Glover*, 148/285, 96 S. E. 562; *Jones*, 146/1, 90 S. E. 278; *City of Waycross*, 146/2, 90 S. E. 281; *Southern Express Co.*, 141/421, 81 S. E. 114. Rule, and exception as to protection of property rights. *Cutsinger*, 142/556, 83 S. E. 263, L. R. A. 1915B, 1097, Ann. Cas. 1916C, 280; *Ray*, 142/799, 83 S. E. 938; *Edison*, 146/767, 92 S. E. 513.

Damages, incapable of accurate computation, ground for relief. *Anthony*, 138/460, 75 S. E. 606.

Debtor's interest in land conveyed as security not subjected as equitable asset, before redemption. *First Nat. Bank*, 146/717, 92 S. E. 69.

Debts, contract to pay; equitable remedy of promisee's creditor. *Sheppard*, 137/615, 74 S. E. 245.

Disclosure of facts, when not available, to deprive contracting party of advantage gained by superior judgment, skill, or information. *Oliver*, 118/362, 45 S. E. 232.

Discovery available in any case, legal or equitable, in any court. *Burress*, 148/548, 97 S. E. 538. See *Taylor*, 148/662, 97 S. E. 858.

From codefendant, prayed in answer to petition for interpleader; effect of response as evidence. *Perkins*, 107/835, 33 S. E. 705.

Incidental to relief by injunction on breach of contract. *Walker*, 148/326, 331, 96 S. E. 627.

In favor of one of defendants in *fi. fa.*, as to amount actually paid by plaintiff seeking contribution. *Miller*, 128/469, 57 S. E. 787.

Merely incidental, petition not retained where main relief not obtainable. *State*, 136/619, 71 S. E. 1055.

Petition indicating no cause of action not retained as a proceeding for. *Veile*, 133/794, 796, 66 S. E. 1087.

Waived, not prevent relief sought in petition for accounting between partners. *Huger*, 126/684, 56 S. E. 64.

Waiver of, withdrawn by amendment, and prayed for. *Jefferson*, 112/499, 37 S. E. 758.

Dispossessory warrant, injunction against execution of, not granted, when. *Johnson*, 117/1009, 44 S. E. 846.

Dissolution of corporations, want of jurisdiction as to. *Daniel*, 146/583, 91 S. E. 665.

Of corporation under act of 1910, when not obtained. *Bank of Soperton*, 142/34, 82 S. E. 464; 142/796, 83 S. E. 782. See C. C. § 2823 (b) et sq.

Distribution of fund from sale of mortgaged property. *Hill*, 104/144, 30 S. E. 996.

- Of fund among creditors, equitable principles applied in, where creditor held lien on two funds, only one of which was available to other lienholder. **Moore**, 10 A. 197, 73 S. E. 45; **Hodnett**, 10 A. 668, 73 S. E. 1082.
- Division of lands under verdict and decree of settlement, set aside, on objection, for fraud or mistake.** **Shumate**, 108/439, 33 S. E. 991.
- Divorce, equitable relief in connection with.** **Wells**, 118/812, 45 S. E. 669.
- Decree of, when not set aside for want of jurisdiction of non-resident defendant. **McConnell**, 135/828, 70 S. E. 647.
- Dower, assignment of, draws right to rents and profits from death of husband.** **Johnson**, 102/355, 30 S. E. 507.
- Equitable jurisdiction of superior court as to assignment of, and securing enjoyment of property set apart. **Bishop**, 103/281, 29 S. E. 968; **LaGrange Mills**, 121/434, 49 S. E. 300.
- Proceeding for, not entered; what relief afforded to purchaser of lands. **Ogletree**, 135/34, 68 S. E. 789.
- Education, jurisdiction of controversy determinable by county board of, not entertained.** **Jarrell**, 137/55, 72 S. E. 417.
- Ejectment, under equitable answer to, improvements far beyond mesne profits not allowed.** **Dudley**, 102/1, 29 S. E. 50.
- Injunction and receiver in aid of plaintiff in. **Vizard**, 117/67, 43 S. E. 426.
- Equitable plea to suit in. **Paden**, 140/46, 78 S. E. 412.
- Equitable adjustment of rights of vendor and vendee in action of. **Lightfoot**, 133/766, 66 S. E. 1094.
- Election by pledgee holding several collaterals.** **Union Point Ginnery &c. Co.**, 142/727, 83 S. E. 657.
- Of remedy, no cause for requiring. **Atlanta Steel Co.**, 138/668, 669, 75 S. E. 980. Doctrine not so applied as to compel holder of collaterals to marshal assets and allow set-off. **Hanesley**, 147/96, 92 S. E. 879.
- Judgment for money barred claim of equitable interest in land on implied trust. **McGarity**, 148/146, 95 S. E. 968.
- Between inconsistent remedies (asserting and denying title), when no case for requiring. **McClellan**, 142/322, 82 S. E. 1069. See **Couch**, 142/22, 82 S. E. 459; **Purdy**, 142/308, 309, 82 S. E. 887, 888.
- Elections, when courts of equity have no jurisdiction of questions arising from.** **Ivey**, 129/286, 58 S. E. 852.
- Validity of, when inquired into, contrary to general rule. **Coleman**, 131/644, 63 S. E. 41.
- General rule that equity will not interfere in matters growing out of; exceptions. **Ogburn**, 121/73, 48 S. E. 702.
- No original jurisdiction in contest. **Tolbert**, 134/294, 67 S. E. 826, 137 Am. St. R. 222; **Tupper**, 104/183, 30 S. E. 624.
- Proceeding for contest cannot be annexed to a suit in equity, and such a suit can not be converted by amendment into a proceeding of that character. **Ogburn**, 123/677, 51 S. E. 641.
- Jurisdiction to enjoin against declaration of result of election held under unconstitutional act. **Tolbert**, 134/292, 67 S. E. 926, 137 Am. St. R. 222.
- Estates, jurisdiction of; remedy.** **Phinizy**, 136/530, 71 S. E. 896.
- Of wards of chancery, jurisdiction of. **Richards**, 106/614, 33 S. E. 193.
- Executor's forfeiture of commissions for failure to make returns, not relieved.** **Davidson**, 106/799, 32 S. E. 867.
- Extraordinary remedies in equity, when not available to creditors.** **Branan**, 122/225, 50 S. E. 45; **Booth**, 122/333, 50 S. E. 173. Extraordinary relief not granted where complete remedy at law exists. **Rice**, 117/402, 43 S. E. 773; **Wright**, 117/405, 43 S. E. 775; **Johnson**, 117/1007, 44 S. E. 846.
- Not applied under statute for receivership to satisfy judgment on insurance policy. **Albright**, 147/492, 94 S. E. 561.

False statement of contract relation, when no ground for equitable relief. *Fuller*, 137/370, 73 S. E. 647.

Foreclosure of mortgage in equity. *Penton*, 140/235, 78 S. E. 917; *Lindsey*, 140/249, 78 S. E. 848. See *Moughon*, 140/699, 79 S. E. 561.

Equitable defense to. Set-off, when allowable, and when not. *Mahone*, 141/214, 216, 80 S. E. 713.

Fraternal benefit association; jurisdiction of action by member, to conserve assets alleged to be going to waste, etc. *Daniel*, 146/583, 91 S. E. 665.

Garnishee not availing himself of legal defense, to prevent paying debt twice, not entitled to equitable relief. *Collier*, 128/442, 57 S. E. 691.

Garnishment equitable, in behalf of surety. *Cooper*, 132/529, 538, 64 S. E. 650.

Equitable petition in aid of, trial term as to. *Gunn*, 103/607, 30 S. E. 541.

Equitable, petition for receiver to collect rents was in the nature of. *Atlas Asso.*, 110/573, 35 S. E. 772. See *Bush*, 110/472, 35 S. E. 640.

Equitable remedy in lieu of. *Spence*, 129/34, 58 S. E. 463.

In city court did not lie to subject legatee's interest; equitable accounting necessary. *Commercial Bank*, 147/386, 94 S. E. 303.

Habeas corpus is not an equitable remedy. *Sumner*, 117/229, 43 S. E. 485.

Home, provision for, in deed construed. Remedy for deprivation of. *Stiles*, 122/639, 50 S. E. 484.

Ignorance of law, where no fraud or misplaced confidence, no ground for relief. *Burke*, 124/248, 52 S. E. 653.

Of a fact does not justify interposition of equity, unless injured party rightly relied on the other and was thereby deceived. *Keith*, 114/176, 39 S. E. 850.

Of a fact by both parties does not justify interference by the court. *Dubignon*, 106/317, 32 S. E. 102.

Illegal scheme, whether equity will relieve parties to. *Equitable Loan Co.*, 117/

603, 673, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177.

Impounding funds by equitable proceeding. *Spence*, 129/34, 58 S. E. 463.

Of bankrupt's exemption on suit of creditor holding waiver. *Pincus*, 139/366, 77 S. E. 82.

Of funds, error, for want of jurisdiction of defendant against whom substantial relief prayed. *Keith*, 138/769, 76 S. E. 91; *Bishop*, 138/771, 76 S. E. 89.

Of note, when payee no party, error. *Pincus*, 139/366, 77 S. E. 82.

Of rents, etc., auxiliary petition for, pending action of complaint for land, when lies. *Adams*, 143/701, 85 S. E. 834.

Improvements by vendee of land, allowance for, on rescission of contract. *Lytle*, 122/459, 50 S. E. 402.

Inadequacy of price and disparity of mental ability, as ground for setting aside contract (deed). *Pye*, 133/246, 65 S. E. 424.

Inconsistent remedies, no concurrent pursuit of. *Couch*, 142/22, 82 S. E. 459. See *Purdy*, 142/308, 309, 82 S. E. 887, 888; *McClellan*, 142/322, 82 S. E. 1069.

Infringement of name, style, or emblems; remedies. *Faisan*, 144/797, 87 S. E. 1080.

Injunction against prosecution of other suit, propriety and necessity for, must appear. *Ambursen*, 140/1, 7, 78 S. E. 340, 47 L. R. A. (N. S.) 684.

Against doing business or performing service; jurisdiction, how invoked. *Kinney*, 138/81, 74 S. E. 772, 40 L. R. A. (N. S.) 473.

Injury not irreparable, but case for intervention of equity. *Chestatee Co.*, 118/255, 45 S. E. 267.

Insolvency as ground for interference of equity. *Woodstock*, 118/642, 45 S. E. 429.

As ground for relief in, need not extend to sheriff aiding wrong-doer. *Justice*, 104/717, 30 S. E. 941.

Proceeding; share of collateral-holder in dividend. English rule not fol-

Insolvency—(Continued).

lowed. *Citizens &c. Bank*, 147/74, 92 S. E. 868, L. R. A. 1918B, 1021.

Of next friend, when no ground for relief. *Crenshaw*, 127/742, 57 S. E. 57.

Of partnership, deceased partner solvent, assets how administered. *Johnson*, 102/350, 30 S. E. 507.

Insurance company; remedy of policyholders and creditors not excluded by act of 1912. *Wright*, 142/765, 83 S. E. 666.

Interpleader and direction, effect of petition for, by administrator who was agent of decedent's creditors. *Jasper County Bank*, 144/542, 87 S. E. 661. Interpleader and injunction at instance of one owing wages which various persons claimed under assignments by the employee and which others sought to subject to garnishment. *W. & A. R. Co.*, 128/74, 57 S. E. 100.

Allegations requiring order of, as to claimants of estate. *Fay*, 147/648, 95 S. E. 224.

By rival claimants, administratrix owing money may require, on what facts. *Millsap*, 145/95, 88 S. E. 673.

As involving two suits, or two sets of pleadings; practice stated. *Estill*, 147/358, 94 S. E. 304.

By different claimants as widow of decedent, suing for his homicide, not ordered. *Atlantic Coast Line R. Co.*, 146/488, 91 S. E. 555.

May be had as to realty. *Steed*, 115/102, 47 S. E. 272.

On conflicting claims to rents. *Ball*, 139/727, 78 S. E. 26.

Petition must allege that property as to which interpleader is sought is in petitioner's possession or control. *Steed*, 115/102, 41 S. E. 272.

Remedy on petition for, in favor of debtor from whom payment is claimed by different administrators. *McKinney*, 135/157, 68 S. E. 1095.

Rule as to when proceeding lies for; and when order refused. *Manufacturers Finance Co.*, 141/621, 81 S. E. 1033.

Sufficient showing of non-collusion.

Andrews, 145/472, 89 S. E. 522.

When authorized; order for, reversed, because no reasonable doubt as to rights in question. *Franklin*, 119/855, 47 S. E. 344.

Order for, not granted ex parte, but after opportunity for hearing. *Smith*, 144/496, 87 S. E. 655.

Petition serving purpose of bill of, involves what. *Smith*, 144/496, 87 S. E. 655. When lies. *Ben Hill County*, 144/326, 87 S. E. 15.

Where parties interplead each occupies the position of a plaintiff in a possessory action, and must recover on the strength of his own title. *Conway*, 121/254, 48 S. E. 956, 2 Ann. Cas. 269.

Intervention alleging action to be collusive, and praying for leave to defend, when retained. *Tanner*, 146/338, 91 S. E. 59.

Alleging that suit in trover is collusive, and seeking to recover property on paying sum named, not allowable. *Delaney*, 138/513, 75 S. E. 632.

By claimant of lien for money paid on fire-insurance premiums for railroad, did not prevail. *Jones*, 145/335, 89 S. E. 195.

By indorser of notes for money borrowed to pay taxes of railroad, prevailed. *Valdosta Bank*, 145/336, 89 S. E. 216.

By stockholder in behalf of corporation defendant. *Hannah*, 144/291, 86 S. E. 1085.

By stranger in suit, not allowed, when. *Clarke*, 113/1074, 39 S. E. 437.

Error in striking, for want of equity and for misjoinder of parties or causes. *Sheppard*, 137/615, 74 S. E. 245.

May be filed without previous order. Disallowed, where main petition not maintainable. *Branan*, 122/222, 50 S. E. 45.

Not formally served, but properly considered, petitioner having notice, etc. *Fidelity Co.*, 134/778, 68 S. E. 503.

Of legatee, allowable in citation of executor for settlement of estate. *Hanvy*, 140/691, 79 S. E. 772.

Of lienholder prevailed over prayer for injunction and judgment in rem. **Fidelity Co.**, 134/778, 68 S. E. 503.

Of new parties and distinct cause not allowed after final termination of cause. **Central Bank**, 147/330, 94 S. E. 308.

Of parties interested in subject-matter of the suit, error in dismissing. **Blalock**, 147/485, 94 S. E. 567; **Allen**, 143/476, 85 S. E. 336.

Of stockholders who filed certificates and received money, when not not retained. **Allen**, 136/656, 71 S. E. 1101.

Of third party disallowed, no ground for plaintiff to complain. **Gammage**, 101/540, 28 S. E. 969.

Pro interesse suo, when not allowed; rule and exceptions. **Tanner**, 145/512, 89 S. E. 515.

Right of claimant by, to possession as against receiver of bailee. **Penton**, 140/576, 79 S. E. 465.

Right of, in stockholders, on petition of creditors against corporation. **Jones**, 134/553, 68 S. E. 303.

Stricken, no ground of exception by plaintiff in the original petition. **McDonald**, 143/456, 85 S. E. 317.

To defend against mortgage foreclosure, and to set up equitable right, not allowed. **Trust Co.**, 136/862, 72 S. E. 347.

Creditors filing, when not entitled to have fund in receiver's hands retained to await result of suit to be brought by them. **Spence**, 129/31, 58 S. E. 463.

Demurrable petition not upheld by filing of. Intervenor takes the case as they find it. **Atlanta &c. R. Co.**, 140/650, 79 S. E. 555.

Creditor takes pleadings as he finds them when made a party, and is bound by waiver. **Booth**, 131/750, 63 S. E. 502.

Intervenor takes the case as they find it. Issue confined by agreement to single question. **Worsham**, 147/39, 92 S. E. 756. Liens in favor of other parties, established by decree. **Per-**

kins, 147/527, 94 S. E. 1003. Bound by previous decree, as to priority of claims. **Perkins**, 147/527, 94 S. E. 1003; **American Nat. Bank**, 147/667, 95 S. E. 227. One seeking benefit under decree, not allowed to attack it in the same proceeding. **Seaboard Ry.**, 125/463, 54 S. E. 138.

Jurisdiction wanting in county where sole defendant resides against whom substantial relief is prayed. **Toland**, 138/334, 75 S. E. 138; **Bishop**, 138/771, 76 S. E. 89.

Of equitable suit against several defendants residing in other counties, when not held. **Railroad Com.**, 124/633, 53 S. E. 193.

Of defendant residing in another county, did not exist as to equitable relief, in suit for land, mesne profits, etc., **Ellis**, 119/238, 46 S. E. 105; **Vizard**, 115/491, 41 S. E. 997.

Not taken for relief against defendants residing in other county. **Hutchinson**, 140/792, 79 S. E. 1125.

Of petition against husband and wife, to subject land claimed by wife, was in county where they resided, though land lay in other county. **Hix**, 103/738, 30 S. E. 583.

Of petition to enjoin levy, not taken where sole resident defendant is sheriff. **Dade Coal Co.**, 103/809, 30 S. E. 640.

In county of defendant's residence, etc.; plea and waiver; separable verdict and decree. **White**, 139/588, 77 S. E. 789.

In county of debtor's residence, though personalty for which receiver appointed be in counties of other judicial circuit. **Johnson**, 112/449, 37 S. E. 766.

Of equity, pleadings and evidence brought case within. **Lester**, 118/123, 44 S. E. 824.

Of person must precede exercise of equitable powers. **Tennessee Fertilizer Co.**, 147/588, 95 S. E. 81.

Not taken, where sole resident defendant is sheriff and only relief prayed against him is to restrain execution

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of dispossessionary warrant. **Woolley**, 102/591, 29 S. E. 119.

Not set forth; petition being against two foreign corporations, two individuals residing in another county, and the sheriff of county where petition filed. **Reynolds Co.**, 116/495, 42 S. E. 796.

Inchoate on sanction of petition, complete on filing thereof, followed by service. **Young** 135/339, 69 S. E. 593, 31 L. R. A. (N. S.) 1057, 22 Ann. Cas. 144.

Exercised as to whole cause, though some of the questions involved if standing alone, would furnish no basis for equitable jurisdiction. **Eagan**, 115/134, 41 S. E. 493.

Acquired for one purpose, retained for all. **Latimer**, 119/887, 897, 47 S. E. 322; **Baxter**, 126/359, 54 S. E. 1036; **Miller**, 139/29, 76 S. E. 585. When rule not applicable. **Richards**, 106/614, 670, 33 S. E. 193.

Justice's court, equitable principles applied in; jury sworn to try cause "according to equity." **Stewart**, 14 A. 438, 81 S. E. 382.

Landlord's remedy, where tenant conveys all property to defeat collection of rent. **Helmken**, 138/200, 75 S. E. 3. See **Estill**, 138/608, 75 S. E. 659. Jurisdiction of issue between landlord and tenant. **Bashinski**, 133/38, 65 S. E. 152; **White**, 133/538, 65 S. E. 152.

Legal and equitable remedies in one proceeding. **Williams**, 113/1020, 39 S. E. 471; **Cunningham**, 135/249, 253, 69 S. E. 101; **Perkins**, 119/703, 46 S. E. 825; **Bentley**, 119/911, 47 S. E. 209. Legal branch of case should be governed by the legal principles which would be applicable in separate proceedings at law. *Id.* Judgment on note setting up lien on land conveyed to secure it, and setting aside void tax sale. **Brumby**, 107/259, 33 S. E. 49. Jurisdiction of courts of law to administer equitable relief in suit by receiver against stockholders of bank. **Moore**, 106/557, 32 S. E. 647. Legal remedy waived by resort

to equity. **C. & W. C. R. Co.**, 105/20, 30 S. E. 972.

Levy aided by equitable petition, when. **Dawson**, 109/389, 34 S. E. 668.

Lien foreclosure in equity, not allowed, where contractor adjudged a bankrupt before suit by materialman. **Pike Lumber Co.**, 132/675, 64 S. E. 998, 26 L. R. A. (N. S.) 409.

Not obtained by lender of money used to pay creditors of insolvent estate. **Putney**, 142/118, 82 S. E. 519.

Under waiver note against exemption applied for in bankruptcy, denied. Injunction against debtor receiving property, not decided. **Coffey**, 129/430, 77 S. E. 561.

Which would go out by merger with title, proceeding to keep outstanding, must be taken before property subjected to other liens. **Bearden**, 101/169, 28 S. E. 678.

Creditor holding two liens, compelled to make money out of one, at suit of other creditor. Rule not so extended as to compel him to look to indorser. **National Bank**, 110/697, 36 S. E. 265.

Lis pendens; decree in suit for specific performance bound purchasers without actual notice. **Whatley**, 139/149, 152, 76 S. E. 1025.

Marriage, petition for annulment of, when not maintainable, and not retained as libel for divorce. **Griffin**, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 14 Ann. Cas. 866.

Marshaling assets and securities, principle of, as affecting pledgee holding several collaterals. **Union Point Co.**, 142/727, 83 S. E. 657.

Remedy not so extended as to debts. **Hanesley**, 147/96, 92 S. E. 879. lay creditor holding collateral securi-

Rights of creditors as against creditor to whom two funds are available. **Earnest**, 115/301, 41 S. E. 640.

Decree as to proceeds of life policies on petition for. **Exchange Bank**, 104/461, 31 S. E. 459.

No attempt as to, by creditors' petition against shareholders of bank-

rupt corporation. **Carlisle**, 143/799, 85 S. E. 1010, Ann. Cas. 1917A, 973.

Of insolvent estate, jurisdiction of action for, in county of any creditor's residence. **Ragan**, 142/398, 83 S. E. 119.

Petition here made case for. **Brooks**, 113/86, 38 S. E. 409.

Rule and limitation, as to requiring creditor to resort to one of two funds. **Mulherin**, 1 A. 154, 58 S. E. 60.

Administrator's action for, did not prevent secured creditor from taking judgment and selling land, under the facts. **Royal**, 143/347, 85 S. E. 190.

Administrator's petition for, when not demurrable. **Bellerby**, 105/477, 30 S. E. 425.

When petition of solvent individual to marshal his own assets, will not be entertained. **Martin**, 129/562, 569, 59 S. E. 302. Corporation could not maintain suit to marshal its own assets. **Bank of Soperton**, 142/34, 796, 82 S. E. 464; 83 S. E. 782.

Mental incapacity to make contract, recovery by administrator of deceased transferor on ground of. **Perry**, 137/427, 73 S. E. 656.

Minors, validity and invalidity of judgments and orders for sale of estates of. **Peavy**, 131/104, 62 S. E. 47; **Turner**, 131/444, 62 S. E. 587; **Morehead**, 131/807, 63 S. E. 507; **Richards**, 106/615, 33 S. E. 193.

Legal estate, want of authority in vacation to order sale of. **Powell**, 143/728, 85 S. E. 891.

Estate of, equitable proceeding to subject, for necessary services to. **Gaston**, 129/754, 59 S. E. 799.

Money had and received, action for. **Butts county**, 136/693, 71 S. E. 1046.

Money rule, parties on, concluded by previous decree. **Claffin Co.**, 106/282, 32 S. E. 108.

Equitable principles may be invoked on, by pleading and evidence. **Continental Fertilizer Co.**, 140/39, 41, 78 S. E. 460.

Award on. **Green**, 101/259, 28 S. E. 692.

Mortgage on personalty not foreclosed in equity, if remedy adequate by legal foreclosure. **Ford**, 144/357, 87 S. E. 274.

Foreclosure of security deed as. **Posser**, 132/280, 64 S. E. 75 L. R. R. A. (N. S.) 571; **Stone**, 101/290, 28 S. E. 840.

Validity of, open to objection by creditors made parties to equitable foreclosure. **Hightower**, 148/148, 95 S. E. 993.

When equitable pleading necessary to defense against foreclosure. **Donelson**, 137/849, 74 S. E. 762, See **Crawford**, 137/760, 74 S. E. 520.

Foreclosure prevented by pending homestead, remedy after estate expired. **Moughon**, 140/700, 79 S. E. 561.

Foreclosure on personalty; remedy by affidavit of illegality, without resort to equity. **Crawford**, 137/760, 74 S. E. 520.

Mortgagor can not recover in equity for payments made and valuable improvements after purchase by mortgagee under power of sale. **Macy**, 102/812, 30 S. E. 430.

Multiplicity of suits and circuitry of action, doctrine of, applied. **Chamblee**, 131/554, 560, 62 S. E. 1032; **Price**, 120/18, 48 S. E. 721, 68 L. R. A. 736.

Arising on contract relation, relief to avoid. **Collins**, 142/710, 83 S. E. 660.

Avoidance of, as cause for joining distinct defendants. **Carlisle**, 143/800, 85 S. E. 1010, Ann. Cas. 1917 A. 973.

Avoidance of, as ground for equitable interference. **Stewart**, 132/205, 207, 63 S. E. 817; **MacKenzie**, 132/334, 63 S. E. 900, 16 Ann. Cas. 723; **Peterson**, 132/366, 64 S. E. 268; **Ray**, 125/509, 54 S. E. 356; **Fleming**, 118/86, 44 S. E. 805; **Chestatee Co.**, 118/255, 45 S. E. 267; **Moore**, 146/178, 91 S. E. 14; **Loudermilk**, 130/526, 61 S. E. 122; **Florida Yellow Pine Co.**, 140/321, 323, 78 S. E. 901.

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Avoidance of, in suit for unpaid subscriptions to capital stock. *McKey*, 147/662, 95 S. E. 217.

Vendor's action against vendee and his transferee, for special judgment against land. *Morgan*, 148/123, 95 S. E. 986. See *Kirkpatrick*, 148/708, 98 S. E. 265.

Avoided by consolidation of cases. *Miller*, 118/269, 270, 45 S. E. 237.

Equity interferes to prevent. *Huxford*, 124/815, 52 S. E. 439. Levy of two tax executions on different parcels of land, and issuance of third, no authority for injunction to prevent multiplicity. *Mayor*, 124/750, 53 S. E. 183.

Meaning of. *Gray Co.*, 122/352, 50 S. E. 164. Avoidance of, by one suit on unpaid stock subscriptions. *Allen*, 122/558, 50 S. E. 494.

Need of interference to prevent, not shown. Dispute as to right of possession of house. *Powell*, 147/619, 95 S. E. 214.

Right of several owners of property assessed for cost of public improvement in municipality. *Sanders*, 141/442, 81 S. E. 215.

Proceeding by surety to prevent. *Ben Hill County*, 144/326, 87 S. E. 15.

When no ground for restraining enforcement of ordinance. *Ga. Ry. &c. Co.*, 129/579, 59 S. E. 296.

Municipal corporation, business affairs of, not interfered with, except in clear case of mismanagement or fraud. *McMaster*, 122/231, 50 S. E. 122.

Municipal-court suit, restraint of, and determination of all issues in one equitable cause. *Kirkpatrick*, 148/708, 98 S. E. 265.

Name, insignia, and emblems of associations, relief against infringement of. *Faisan*, 144/797, 87 S. E. 1080.

Ne exeat as remedy; origin and extent of this writ. *May*, 146/522, 91 S. E. 687.

Nature of the writ. When granted at instance of wife applying for alimony. *Lamar*, 123/827, 51 S. E. 763. 107 Am. St. R. 169, 3 Ann. Cas. 294.

Does not lie as to one removing to other places in the State. *Reed*, 110/525, 35 S. E. 650.

Negligence, no relief from results of. *Branan*, 3 A. 587, 60 S. E. 325; *Williams*, 3 A. 762, 60 S. E. 372.

Non-resident of the county was sued in equity. He filed an answer and cross-petition. Court could settle accounts and give money judgment. *Sanford*, 114/1005, 41 S. E. 668.

Defendants, jurisdiction of. *Boyd*, 104/793, 31 S. E. 29; *Kruger*, 111/383, 36 S. E. 794.

Claimant of land levied on, jurisdiction of, where equitable petition is brought in aid of levy. *Thomason*, 129/444, 59 S. E. 236.

Debtor sued jointly with residents, jurisdiction of action in personam against, not obtained. *Levy*, 145/245, 88 S. E. 959.

Who is suing in court of limited jurisdiction, jurisdiction of bill against. *Moore*, 101/94, 28 S. E. 836.

Defendant in ejectment, who prays for affirmative relief, jurisdiction of. *Lightfoot*, 133/766, 66 S. E. 1094.

Jurisdiction of non-resident stockholder of domestic corporation, not acquired by seizing res (stock). *Tennessee Fertilizer Co.*, 147/588 (dissent, 590), 95 S. E. 81.

Jurisdiction of proceeding against non-resident executors of stockholder in domestic corporation. *Hamil*, 133/216, 65 S. E. 961.

Jurisdiction to restrain suits at law by, so as to afford equitable relief to defendant. *Home &c. Co.*, 148/567, 97 S. E. 637.

Jurisdiction to stay proceeding begun by. *Hutchinson*, 146/357, 91 S. E. 206.

Remedy in personam as to debts due to, by resident, not obtained before judgment against non-resident. *Levy*, 145/245, 88 S. E. 959.

When relief not granted for non-residence. *Davis*, 135/116, 69 S. E. 172; *Stoner*, 124/754, 757, 52 S. E. 894.

Note assumed by maker's grantee, remedy in equity, not at law, in favor of holder of. *Union City Co.*, 138/703, 76 S. E. 35.

Nuisance, when no equitable relief afforded against. *Central Railway Co.*, 133/392, 65 S. E. 855. See *Nuisance*.

Jurisdiction to abate, when taken. *Hill*, 112/788, 38 S. E. 42, 52 L. R. A. 398.

Abatement of, on suit by solicitor-general upon relation of citizen without special interest. *Edison*, 146/767, 92 S. E. 513.

Continuing, interference to prevent. *Spires*, 147/633, 95 S. E. 232.

Public (partial obstruction of road or street), restraint of, at suit of solicitor-general. *Rider*, 147/760, 95 S. E. 284. Municipal ordinance valid. *Sanders*, 147/819, 95 S. E. 695.

When equity interferes to restrain; rule. *Gray Co.*, 122/351, 50 S. E. 164. Public nuisance restrained on information of solicitor-general. *City Council*, 122/754, 50 S. E. 998, 69 L. R. A. 564, 106 Am. St. R. 147.

Office, public, question of title to, not for court of equity. *Coleman*, 103/462, 30 S. E. 297.

In private corporation wrongly held on invalid election, equitable relief denied. *McCarthy*, 137/292, 73 S. E. 394.

Officer, rule as to non-interference with, by court of equity. *Hudspeth*, 113/7, 38 S. E. 358, 84 Am. St. R. 201; *Clarke*, 113/237, 38 S. E. 852.

Parties essential to exercise of jurisdiction. *Kehr*, 132/626, 64 S. E. 673.

Jurisdiction not lost by death, removal, or resignation of sole resident defendant. *Lofton*, 117/434, 43 S. E. 708, 61 L. R. A. 150.

Partition of land on parol agreement, followed by exclusive possession in severalty, gives equitable title. *Reed*, 146/820, 92 S. E. 632.

Is in nature of proceeding in equity. Recovery of mesne profits, etc. *Hall*, 146/815, 817, 92 S. E. 536.

Improvements by cotenant, how considered. *Smith*, 133/171, 65 S. E. 414.

Objections to, when properly passed on by judge, without jury. *Brown*, 108/335, 33 S. E. 942.

Jurisdiction to decree sale of land for. *Johnson*, 145/817, 90 S. E. 60.

Jurisdiction in cases of. Warrantor of title, who later acquired undivided interest at instance of warrantee, could not have partition on the facts. *Oliver*, 141/126, 80 S. E. 630. See, as to jurisdiction, *Crumley*, 141/605, 81 S. E. 871.

In equity, where rights cannot be fully administered in statutory proceeding. *Stringfellow*, 143/340, 85 S. E. 108.

Appointment of partitioners, in vacation, on prayer added by amendment to equitable petition involving title to timber. *Baxter*, 129/460, 59 S. E. 283.

Decree in, appropriating interest of deceased tenant in common to debt due by him to cotenant, when not granted. *Vason*, 102/540, 29 S. E. 456.

Petition for partition and accounting good as against demurrer. *Hudson*, 119/637, 46 S. E. 874.

Administrator of deceased cotenant, how far held as party defendant in proceeding for. *Vason*, 102/540, 29 S. E. 456.

Two methods of, discussed; and when statutory partition can not serve to divide lands and recover possession of parcels held adversely. *Cock*, 141/774, 82 S. E. 286.

Account between cotenants in proceedings for. *Turnbull*, 116/768, 43 S. E. 42.

Of property purchased partly with homestead income and partly with other means. *Kiser*, 102/429, 30 S. E. 967.

Sale subject to confirmation; timely objections, without resort to equity. *Oswald*, 140/62, 78 S. E. 333, Ann. Cas. 1914D, 1.

Pending proceeding in other county, want of jurisdiction to relieve against. *Stone*, 140/487, 79 S. E. 122.

In other court, necessity for, as ground for refusing relief. *Greer*, 140/743, 79 S. E. 846.

Plea to jurisdiction not heard from plaintiff, as to cross-bill. *Ray*, 106/492, 32 S. E. 603.

Remedies in equity available to one sued for land, must be set up by, not by independent suit in superior court. *McCall*, 120/661, 48 S. E. 200.

Possessory-warrant proceeding, when not arrested by injunction. *Cicero*, 129/333, 58 S. E. 850.

Executed, officer not interfered with for entrusting the property to another pendente lite. *Sumner*, 118/240, 44 S. E. 973.

Power, defective execution of, aided in. Not so where no authority to execute it. *Satterfield*, 132/256, 64 S. E. 60.

Prices of commodity, prayer for relief as to, when not granted. *Southern Ice & Co.*, 143/810, 85 S. E. 1021.

Private property, jurisdiction to protect, as to nuisance and trespass, etc. *Ga. R. Co.*, 118/490, 45 S. E. 256.

Equity will protect, ignoring criminal features of the case. *Hasbrouck*, 127/220, 56 S. E. 241.

Property rights of exercise of franchises, protection of, against criminal prosecutions. *Mayor & c. of Shellman*, 134/29, 67 S. E. 438, 27 L. R. A. (N. S.) 452; *Mayor & c. of Jonesboro*, 134/190, 67 S. E. 716. See catchword "Criminal."

Proprietary rights in formula and trade-name, relief against infringement of. *Walker*, 148/326, 331, 96 S. E. 627.

Protracted supervision of court, necessity for, as ground for refusing relief. *Greer*, 140/743, 79 S. E. 743.

Purchase-money unpaid by innocent grantee of fraudulent vendee, impounded for creditors. *Beasley*, 144/380, 87 S. E. 293.

Relief against payment of, what necessary for. *Mallard*, 106/505, 32 S. E. 588.

Notes for, remedy of transferee against collusive manipulation by ven-

dor and vendee. *Field*, 142/425, 83 S. E. 93.

Quia timet proceeding, action for decree of title was defective as. *Tucker*, 148/47, 95 S. E. 672.

Receiver not properly ordered to continue operating gold-mine pendente lite. *Bigbee*, 101/201, 28 S. E. 642.

For corporation, on petition of minority stockholder, when denied. *Bartow Lumber Co.*, 131/329, 62 S. E. 233.

Creditors without lien against insolvent railroad have no right to. *Atlanta R. Co.*, 140/650, 79 S. E. 555.

Appointment of, before petition filed, not coram non judice. *Young*, 135/344, 69 S. E. 593, 31 L. R. A. (N. S.) 1057, 22 Ann. Cas. 144.

Legal rights only involved, error to grant equitable relief (receiver). *S. C. & Ga. R. Co.*, 106/184, 33 S. E. 36.

Remedies of claimant of cause of action against. *Cain*, 138/98, 99, 74 S. E. 764.

Order for payment of money by, when not authorized. *St. Amand*, 131/469, 62 S. E. 589; *Booth*, 131/750, 63 S. E. 502.

Of U. S. court, for one company, having taken properties of another company, when not suable in State court by judgment creditor of that other. *Glover*, 101/824, 29 S. E. 36.

Of rents pending action to recover land of insolvent tenant in possession. *Hunter*, 137/258, 73 S. E. 380.

For insolvent corporation, effect of decree appointing, and directing suits against debtors. *Graves*, 15 A. 718, 84 S. E. 187. Right to sue in court without equitable jurisdiction. *Ib.*

Petition by, to require suitor to set up claim in equity, when not maintained. *American Exchange Bank*, 146/580, 91 S. E. 554.

Jurisdiction of creditor's petition for settlement with. *McGregor*, 124/562, 53 S. E. 93.

Sale by, jurisdiction as to bidder at, resident of other county. *Smith*, 106/415, 32 S. E. 375.

What necessary to hold bidder at sale by, liable for excess of accepted

bid over price obtained at resale ordered at his risk. **Smith**, 106/409, 32 S. E. 375.

Represents defendant corporation, and may file ancillary petition. **Boyd**, 104/799, 31 S. E. 29.

Relief appropriate under general prayer, when granted, where specific performance and other special relief cannot be afforded. **Hamil**, 133/217, 65 S. E. 961.

Substantial; injunction against sheriff and attorney for plaintiff in execution not so held. **Bruce**, 147/395, 94 S. E. 241.

Substantial, prayed against resident defendants. **Massengale**, 148/97, 95 S. E. 975; **Bridges**, 148/99, 95 S. E. 964. Against executor, in action by devisees to cancel his deed. **A., B. & A. Ry. Co.**, 148/282, 96 S. E. 562. Against transferee of debtor-grantor in security deed. **Calvert Mortgage Co.**, 148/556 97 S. E. 522.

When afforded on defense by counter-affidavit to warrant eviction. **Bashinski**, 133/38, 65 S. E. 152. On defense to suit for specific performance, etc. **Becker**, 133/865, 67 S. E. 92.

Prayed as to matters not included in litigation pending, want of jurisdiction as to. **Home Mixture Co.**, 148/567, 97 S. E. 637.

Jurisdiction not defeated by fraud rendering impossible the particular relief prayed. **Everett**, 127/103, 56 S. E. 123, 119 Am. St. R. 324.

Jurisdiction not affected because some relief prayed cannot be granted in absence of parties. **Home &c. Co.**, 148/567, 97 S. E. 637.

Remainderman's right to aid of court, for preservation of corpus of estate, during continuance of life-estate. **Kollock**, 113/769, 39 S. E. 339. Remainders equitable and legal. **Johnson**, 122/524, 50 S. E. 367; **Stiles**, 122/635, 50 S. E. 484.

Remedy at law adequate, no relief in equity. **Teft**, 104/591, 30 S. E. 803; **McCarthy**, 137/292, 73 S. E. 394; **Carstarphen**, 124/544, 52 S. E. 598. Cf. **Southern Express Co.**, 124/584, 53 S.

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E. 185, 5 L. R. A. (N. S.) 619; **Rice**, 117/402, 43 S. E. 773; **Wright**, 117/405, 43 S. E. 775; **Johnson**, 117/1007, 44 S. E. 846. Such remedy not ground for demurrer to petition not invoking extraordinary relief. **Evans**, 117/944, 44 S. E. 2; **Reid**, 109/424, 34 S. E. 608; **Teasley**, 110/498, 35 S. E. 782, 78 Am. St. R. 113; **Harris**, 136/47, 70 S. E. 869; **Kruger**, 111/385, 36 S. E. 794; **Brooks**, 111/875, 36 S. E. 960; **Harp**, 108/180, 33 S. E. 998.

When no ground of demurrer to creditors' petition. **Maynard**, 138/549, 75 S. E. 582.

No ground of demurrer to petition for ordinary equitable relief; aliter as to extraordinary relief. **Branan**, 122/225, 50 S. E. 45. Inadequate, as ground of equity jurisdiction. **Bailey**, 122/616, 50 S. E. 388.

When too late as ground for dismissal. **Dixon**, 103/711, 30 S. E. 690.

As ground for nonsuit, too late at trial term. **Watson**, 103/737, 30 S. E. 577.

As cause for denying equitable relief. Mortgage foreclosure. **Ford**, 144/350, 87 S. E. 274. Illegality of levy on railroad property. **Harris**, 144/701, 87 S. E. 1041. Removal of fence from private way. **Simmons**, 144/845, 88 S. E. 199.

Accounting and discovery, in suit on contract. **Burress**, 148/548, 97 S. E. 538. See **Taylor**, 148/662, 97 S. E. 858.

By counter-affidavit, to dispossessory warrant. **Woolley**, 102/591, 29 S. E. 119.

To prevent collection of unauthorized fine. **Sayer**, 119/539, 46 S. E. 649.

For breach of contract, petition for injunction dismissed. **Moore**, 110/330, 35 S. E. 339. So as to petition for receiver, where garnishment adequate. **Bush**, 110/472, 35 S. E. 640. Deed not canceled for breach of contract; action for damages lies. **Brand**, 110/524, 36 S. E. 53.

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Affidavit of illegality. **Mathews**, 129/103, 58 S. E. 649; **Park**, 128/122, 57 S. E. 229; **Roney**, 128/250, 57 S. E. 503. Action on bond of administrator, instead of cancellation of agreement, etc. **Sapp**, 128/752, 58 S. E. 447.

By affidavit of illegality, equitable relief not ordinarily obtainable. **Williams**, 134/339, 67 S. E. 821. As to nuisance (street obstruction). **Aiken**, 134/873, 68 S. E. 937.

By rule to distribute money in city court, to transferee of bond for title. **Rucker**, 133/720, 66 S. E. 917.

Contract breach, defense to suit for. **Lundy**, 148/68, 95 S. E. 683; **Baker**, 148/267, 96 S. E. 428.

Contribution by maker of note. **Watkins**, 148/249, 96 S. E. 338.

Affidavit of illegality provided, no injunction against levy and sale. **Mayor**, 124/750, 53 S. E. 183. See **Waters**, 124/349, 52 S. E. 425.

Tenant can recoup damages on eviction proceeding. **Weaver**, 134/150, 67 S. E. 662.

Error to enjoin sale under execution. **Hitchcock**, 107/184, 33 S. E. 35.

For administrator seeking to recover property of the estate, under the facts. **Griffin**, 116/310, 42 S. E. 482.

For parent, where school board made illegal requirement for admission of children. **Board**, 116/788, 43 S. E. 56.

Inability to give bond in legal proceeding not take case out of the rule that injunction will not be granted. **Johnson**, 117/1009, 44 S. E. 846.

Injunction not granted. **Mayor of Moultrie**, 109/370, 34 S. E. 600; **Mize**, 137/798, 74 S. E. 533; **Mize**, 137/812, 74 S. E. 534. See **Kerr**, 137/832, 74 S. E. 535; **C. H. & D. R. Co.**, 111/818, 35 S. E. 640; **Beysiegel**, 113/1074, 39 S. E. 405; **Johnson**, 113/1146, 39 S. E. 469. Not good ground for refusing here. **Fisher**, 113/851, 39 S. E. 305; **Pace**, 113/901, 39 S. E. 420. Legal remedy adequate, and insolvency not alleged, injunction not granted. **Detwiler**, 119/981, 47 S. E. 553.

Remedy at Law—(Continued).

Injunction against establishment of road, not granted. **A. & W. P. R. Co.**, 123/736, 51 S. E. 724.

Injunction and receivership not obtained by creditor of mortgagor or of grantor in deed to secure debt. **Dumas**, 147/307, 93 S. E. 894.

Judgment, vacation of, for matters on face of record, by motion or by affidavit of illegality. **Apperson**, 148/159, 96 S. E. 260.

Not prevent resort to mandamus. **Southern Ry. Co.**, 128/207, 57 S. E. 429.

Objection waived by failure to demur. **Savannah R. Co.**, 123/385, 51 S. E. 401, 3 Ann. Cas. 1092.

Possession of house, issue of trespass in taking. **Powell**, 147/619, 95 S. E. 214.

Public road, objection to establishing. **Ballard**, 148/513, 97 S. E. 443.

Quo warranto. Title to public office the sole issue, no equitable jurisdiction. **Stanford**, 147/518, 94 S. E. 1001.

Tax execution. **Central Ry. Co.**, 148/86, 95 S. E. 963.

Title, adjudication of. **Williams**, 148/615, 97 S. E. 670.

Transferee of stock certificate, legal remedy inadequate for. **Massengale**, 148/97, 95 S. E. 975.

By suit on bond of assignee, for creditors, rather than appointment of receiver in his stead. **Dozier**, 101/179, 28 S. E. 612.

Affidavit of illegality or claim against execution levy. **Smith**, 140/80, 78 S. E. 423. See **Gaulden**, 140/800, 79 S. E. 1125.

By ejectment, no reason for dismissing petition. **Jones**, 127/281, 56 S. E. 453.

By filing claim, not prevent resort to equity in resistance to levy, when. **Watson**, 103/733, 30 S. E. 577.

No injunction, where claim adequate. **Armour**, 118/164, 44 S. E. 990.

In damages, no bar to decree for specific performance of contract. **Clark**, 141/705, 82 S. E. 21, 3 L. R. A. (N. S.) 317.

Remedy at Law—(Continued).

No cause for refusing relief, in case of threat to close way. *Spires*, 147/633, 95 S. E. 232.

No obstacle to equitable action against administrator for accounting and settlement. *Strickland*, 147/494, 94 S. E. 766.

Remand of parties to. *Edge*, 138/93, 74 S. E. 758.

To recover land, no obstacle to decree of cancellation of deed. *Gilmore*, 137/274, 73 S. E. 364.

When not sufficient to deprive equity of jurisdiction. *Merchants &c. Co.*, 132/168, 63 S. E. 700. See *Cooper*, 132/536, 64 S. E. 650.

Though provided, remedy available in equity, as to assessment for public improvement. *Sanders*, 141/442, 81 S. E. 215.

By suit on bond, plaintiff not remitted to, who prayed for general relief. *Armour*, 144/295, 87 S. E. 18.

When not prevent complete relief in equity. *Baxter*, 129/466, 59 S. E. 283.

Inadequate. *Ernest*, 107/61, 32 S. E. 898; *Kirklin*, 107/313, 33 S. E. 83.

Inadequate, where damages incapable of estimate. *Edwards*, 116/205, 42 S. E. 417.

Inadequate after declaration of result of invalid election. *Tolbert*, 134/295, 67 S. E. 826, 137 Am. St. R. 222.

Inadequate, where continued impounding of animals threatened under stock law. *Beaver*, 145/52, 88 S. E. 573.

Inadequate, where building contractor abandoned work and obstructed owner. *Collins*, 142/703, 83 S. E. 660.

Inadequate, as ground for equitable relief. Void judgment of justice's court. *McClatchey*, 144/792, 86 S. E. 1085; *Morris*, 144/705, 87 S. E. 1054. Illegality of execution against another than affiant. *Georgia Ry. &c. Co.*, 144/722, 87 S. E. 1058. Inadequate as to nuisance (operation of hospital). *Giles*, 148/575, 97 S. E. 521.

Inadequate against sale of land in such way as to affect alley right. *Harris*, 134/161, 67 S. E. 880.

Remedy at Law—(Continued).

Inadequate, case for equity. *Hill*, 122/790, 38 S. E. 42, 52 L. R. A. 398.

Inadequate, ground for relief against discharged servant. *Mackenzie*, 132/333, 63 S. E. 900 (23 L. R. A. (N. S.) 1003, 16 Ann. Cas. 723.

Inadequate (issue as to title to land). *Baxter*, 126/359, 54 S. E. 1036.

Inadequate, on contract violation; defendant insolvent, and damages incapable of estimation. *Busk*, 143/18, 84 S. E. 63.

Not adequate, for setting aside judgment by default in city court, in absence of defendant's counsel. *Howell*, 133/674, 66 S. E. 774. Where scheme to defraud creditors alleged. *Moody*, 133/741, 66 S. E. 908.

Not adequate, where property omitted from bill of sale by mutual mistake. *DeVane*, 133/472, 66 S. E. 245.

Not complete, injunction against unlawful condemnation of property granted to the owner. *Chestatee Co.*, 119/358, 46 S. E. 422, 100 Am. St. R. 174.

Inadequate, where officer withheld records, books, etc.; injunction granted. *Clarke County*, 136/382, 71 S. E. 797.

Incomplete, as ground for resort to equitable pleadings. *Chamblee*, 131/561, 62 S. E. 1032; *Branan*, 122/225, 50 S. E. 45; *Booth*, 122/333, 50 S. E. 173; *Sherling*, 122/799, 50 S. E. 935; *Bunn*, 122/833, 50 S. E. 914.

By garnishment, when remedy in equity more full and complete than. *Jaques & Tinsley Co.*, 131/3, 62 S. E. 82.

Affidavit of illegality, remedy in lieu of, for owner not defendant in execution. *City of Atlanta*, 137/805, 74 S. E. 268.

Less adequate and complete than in equity. *Milner*, 114/118, 39 S. E. 890. Remedy in equity more complete, preventing multiplicity of suits, saving costs, etc. *Boyd*, 104/803, 31 S. E. 29. Remedy in equity more adequate, full, or complete than at law, demurrer overruled. *Fleming*, 118/86, 44 S. E. 805. Remedy more suitable and just in

Remedy at Law—(Continued).

equity; as, on partitioning of land. **Cock**, 141/774, 779, 82 S. E. 286.

Jurisdiction of suit on bond of legal representative and sureties, where remedy at law inadequate. **Bailey**, 122/616, 50 S. E. 388.

Remedy over, relief not granted where defendant would be deprived of. **Pike Lumber Co.**, 132/675, 64 S. E. 998, 26 L. R. A. (N. S.) 409.

Right, remedy to enforce; choice of forum not included. **Tennessee Fertilizer Co.**, 147/589, 95 S. E. 81.

Sale and division, to carry out terms of will; partition in kind not practicable. **Phinzy**, 136/530, 71 S. E. 896.

Jurisdiction to decree, did not exist independently of power conferred by deed. But beneficiary's assent to petition was effective. **Lee**, 124/495, 52 S. E. 806.

Void decree of, at chambers, on petition of life-tenant; what necessary for confirmation. **Powell**, 147/497, 94 S. E. 766.

Of property conveyed to married woman for life, remainder to children, order for, "at chambers" in term time, attacked. **Morehead**, 127/510, 56 S. E. 745.

Of estates for life and in remainder, jurisdiction to order, under deed construed. **Gunby**, 146/536, 91 S. E. 556.

For reinvestment solely, and for purpose involving rights over which equity had jurisdiction, distinguished: **Richards**, 106/614, 33 S. E. 193.

Decree for, of estate for life and of the legal estate in remainder. **Richards**, 106/614, 33 S. E. 193.

By sheriff, when set aside for gross inadequacy of price. **Smith**, 114/189, 39 S. E. 846.

By receiver not set aside, where no fraud or mutual mistake, and purchaser in laches. **Southern Cotton Mills**, 138/504, 75 S. E. 611.

School building, jurisdiction not entertained to determine controversy on location of site for. **Edge**, 138/93, 74 S. E. 758.

Security deed, remedies of grantee in, and of his transferee. **Clark**, 122/275, 50 S. E. 108; **Greenfield**, 122/303, 50 S. E. 111.

Service constructive, want of jurisdiction to grant prayer for specific relief on. **Bank of Floral City**, 144/117, 86 S. E. 249.

Set-off and recoupment, origin of. **Hecht**, 114/922, 41 S. E. 74.

When defendant not entitled to injunction against foreclosure of chattel mortgage, in order to avail himself of. **Arnold**, 125/319, 54 S. E. 177.

Right of, in transferee of chose in action, against suit by receiver. **Nix**, 118/345, 45 S. E. 404, 98 Am. St. R. 111.

Petition for judgment to be used as, when demurrable. **Miller**, 136/117, 118, 70 S. E. 887.

Of open account against judgment held by insolvent creditor; what tender essential. **Saffold**, 146/180, 91 S. E. 21.

Of claim against firm, to judgment in favor of member. **Harris**, 117/934, 44 S. E. 11.

Of demand arising after suit begun, plaintiff being insolvent or non-resident. **Bibb Land Co.**, 104/118, 30 S. E. 676; 31 S. E. 401.

Ex delicto, to action ex contractu, allowable only on equitable grounds. **Mayor &c. of Gainesville**, 145/299, 89 S. E. 210.

Demand arising from tort, against action ex contractu. **Ridgway**, 142/611, 83 S. E. 224.

Claim for damages from tort cannot be, against one from contract; rule and exceptions. **Standhardt**, 145/147, 88 S. E. 565.

As ground for injunction against suit in city court. **Butler**, 128/333, 57 S. E. 715; **Butler**, 128/431, 57 S. E. 764.

Stockholder's remedy and duty where corporate capital reduced by illegal charter amendment. **Woodruff**, 135/215, 68 S. E. 1103.

Petition for relief against the corporation, held not demurrable. *Atlanta Steel Co.*, 138/668, 669, 75 S. E. 980.

Doctrine as to contribution of stockholders for unpaid subscriptions, when not applied in suit by creditor of insolvent corporation. *Harrell*, 112/719, 38 S. E. 56.

Rights and liabilities of transferee of stock shares as to creditors of the corporation. *Fouche*, 110/836, 36 S. E. 256.

Subscriptions unpaid, or paid in overvalued specifics, rights of creditors as to. *Allen*, 122/556, 50 S. E. 494.

Subrogation arises when. Facts made no case for application of doctrine. *Lutes*, 146/641, 92 S. E. 58.

Available by plea. *McCall*, 120/661, 48 S. E. 200.

Applied. *McGowan*, 119/494, 46 S. E. 626.

Applied in favor of sureties. *Worthy*, 125/415, 54 S. E. 667.

Discussed. *American National Bank*, 129/131, 58 S. E. 867, 12 Ann. Cas. 666.

When not apply in favor of one advancing money to pay another's debt. *Sackett*, 115/466, 41 S. E. 564.

Equitable, city court had no jurisdiction to entertain prayer for. *Ragan*, 123/16, 50 S. E. 951.

Executor taking assignment of mortgage his testator was bound to pay, not subrogated to mortgagee's rights; effect was to extinguish the debt. *Walker*, 117/734, 45 S. E. 387.

General averment of, no allegation of equitable ownership or assignment of warrant. *Butts County*, 136/697, 71 S. E. 1046.

Indorser of note not deprived of, as by voluntary payment, on application of borrowed money to pay taxes. *Valdosta Bank*, 145/336, 89 S. E. 216.

Not obtained by grantee in second security deed, as to right of prior mortgagee. *Garlington*, 146/527, 91 S. E. 553.

Not taken by voluntary lender of money to pay debts of insolvent estate. V. II—35.

Putney, 142/118, 82 S. E. 519. By surety on bond, on facts pleaded. *Federal Surety Co.*, 142/353, 82 S. E. 1076.

Of insurer to rights of grantee in deed to secure debts. *Peoples Bank*, 146/514, 91 S. E. 684.

Of junior mortgagee on tender of payment of senior lien, rule as to. *Tillman*, 104/689, 30 S. E. 949.

Of later creditors to rights of those whose debts were paid with borrowed money. *Lane*, 140/420, 78 S. E. 1082.

Of lender to rights of holders of county warrants paid out of illegal loan applied to legitimate expenses of county. *Butts County*, 129/801, 60 S. E. 149, 15 L. R. A. (N. S.) 567, 121 Am. St. R. 244.

Of non-volunteer; money paid on void sale was applied to discharge of valid lien. *Ray*, 147/265, 93 S. E. 418.

Of bona fide purchaser at void execution sale, to right of security-deed holder. *Hamilton*, 126/27, 54 S. E. 926; *Rogers*, 146/375, 91 S. E. 414.

Of purchaser at sheriff's sale, to rights of plaintiff in the judgment under which the sale was made. *Ray*, 119/678, 46 S. E. 849. When not defeated by equity of third person. *Equitable Loan Co.*, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

Of purchaser from heirs at law, who paid debt secured by deed of decedent, to rights of secured creditors. *Simpson*, 114/202, 39 S. E. 853.

Of purchaser from mortgagee, to rights and remedies of mortgagor, as against judgment. *Peagler*, 143/11, 84 S. E. 59, Ann. Cas. 1917 A, 232.

Of purchaser, limited to remedies of lien creditor; not extended to assertion of title. *Peagler*, 143/11, 84 S. E. 59, Ann. Cas. 1917A, 232.

Of purchaser of land from debtor, who had conveyed it as security, touching right to redeem. *Loftis*, 139/348, 77 S. E. 169, Ann. Cas. 1914B, 718.

Of purchaser of land, to rights of holder of security deed, on payment of the secured debt, as against one holding

Subrogation—Continued).

a mortgage younger than that deed.

Crawford, 117/135, 43 S. E. 421.

Of surety, to rights of creditors.

American National Bank, 131/857, 63

S. E. 622, 21 L. R. A. (N. S.) 962.

Action for enforcement of legal, not equitable right. **Sherling**, 122/799, 50

S. E. 935.

Of surety who completes building, as

to balance of price. **Fulton National**

Bank, 144/691, 87 S. E. 1023.

Of surety who pays principal's debt;

differing doctrines as to extent of this

right. **Train**, 141/96, 80 S. E. 554, 49

L. R. A. (N. S.) 950.

Surety not entitled to, who fails to

have entry of his payment made on fi.

fa. **Cureton**, 120/559, 48 S. E. 162.

Right of, to indorser. **National Bank**,

110/697, 36 S. E. 265. Stock, trans-

feree of. **Fouche**, 110/836, 36 S. E. 256.

To rights of indorsee of note, makers

can not have, by claiming to be sureties

for the payee and indorser. **Shank**, 124/

509, 52 S. E. 621.

To rights of wife's creditors, hus-

band can not have, who pays her debt

for land and takes transfer of her bond

for title. **Webb**, 124/ 723, 53 S. E.

247.

Waiver of right to, by widow who

paid notes secured by mortgage, given

for realty purchased by partnership of

which deceased husband was member.

Ferris, 110/102, 35 S. E. 347.

When applied in favor of grantee in

void deed. **Bond**, 133/160, 65 S. E.

376, 134 Am. St. R. 199. When not

applied. **Brown**, 133/345, 65 S. E. 780.

Substantial relief, what constitutes, in ac-

tion for specific performance of bond

for title. **Jackson**, 127/183, 56 S. E.

318.

Prayed; action for cancellation and

for injunction. **Lowndes Lumber Co.**,

137/795, 74 S. E. 531.

By necessary cancellation of bond

for title. **Turman**, 145/312, 89 S. E.

214.

Not prayer against publisher; to re-

strain advertisement of sale in which

he is not interested. **Smith**, 147/58, 92

S. E. 867.

Surety on eventual condemnation-money

bond, equitable defense or intervention

by, when allowed. **Price**, 121/17, 48 S.

E. 721, 68 L. R. A. 736.

May proceed against principal to com-

pel payment, after debt due, though not

sued. **Cooper**, 132/529, 64 S. E. 650.

May invoke aid of equity, when. **Tim-**

mons, 138/70, 74 S. E. 784; **Webb**,

138/342, 75 S. E. 106.

In bail-trover could not compel plain-

tiff therein to litigate with him in

equity as to the title. **Campbell**, 112/

737, 38 S. E. 50.

Tax sale, time for redemption from, not

extended by equity. **Montford**, 111/18,

36 S. E. 305.

Illegal, equitable relief against en-

forcement of, granted when. **Hewin**,

121/724, 49 S. E. 765, 67 L. R. A.

795, 2 Ann. Cas. 296.

Executions paid by and transferred

to mortgagee, his rights and priorities

are those had by State, county, or city.

Ferris, 110/102, 35 S. E. 347.

Executions ordered paid to mort-

gagee enjoined from foreclosing, in

vacation and before decree, from in-

come in receiver's hands. **Ferris**, 110/

102, 35 S. E. 347.

Execution not arrested by affidavit of

illegality unless so provided by statute.

Injunction lies. **Webb**, 138/ 342, 75 S.

E. 106.

Paid to one county by manufactur-

ing concern located in two counties, in

1892, not recoverable by other county.

County of Morgan, 120/1028, 48 S.

E. 409.

Equitable jurisdiction to inquire into

validity of, and to restrain, if illegal.

Coleman, 131/648, 63 S. E. 41.

Equitable action for recovery of, as

debt, did not lie. **State**, 136/619, 627,

71 S. E. 1055.

Assessment value, equity affords no

hearing on mere question of. **Shippen**

Lumber Co., 134/703, 68 S. E. 509.

Assessment, failure to arbitrate, by

disagreement of arbitrators, no cause

for relief. **Turner**, 147/666, 95 S. E. 220.

Liability denied, but taxability conceded, equitable remedy not applied. **Central of Ga. Ry. Co.**, 148/86, 95 S. E. 963.

Remedy in equity, not at law, on levy of execution for taxes due the State. **Webb**, 138/342, 75 S. E. 106.

Tenant's petition for injunction against warrant of eviction, for discovery, accounting, etc., when demurrable. **Hays**, 124/908, 53 S. E. 399.

Tenant in common, relief to, as against cotenants, by injunction, accounting, partition, etc. **Lester**, 118/123, 44 S. E. 824.

Can not maintain equitable proceeding to oust cotenant from land held in common and from all participation in its profits. **Thompson**, 113/1024, 39 S. E. 419.

Term and not chambers order, on application to lease trust estate of minors, when binds. **Palmer Brick Co.**, 135/450, 69 S. E. 827.

Testamentary meaning to be ascertained in court of equity. **Knowles**, 132/811, 65 S. E. 128.

Title, proceeding to quiet, and to remove cloud, when not authorized. **Howell**, 137/710, 74 S. E. 255.

To land, equitable jurisdiction as to trial of. **Baxter**, 126/359, 54 S. E. 1036.

To land, what equitable actions are not cases respecting. **Martin**, 134/34, 39, 67 S. E. 536.

Trademark or trade name infringed on; equitable jurisdiction. **Hagan & Dodd**, 1 A. 102, 57 S. E. 970.

Calculated to mislead as to place where goods manufactured, prior use gave no right to injunction. **Coleman**, 103/784, 30 S. E. 639, 41 L. R. A. 470, 68 Am. St. R. 143.

Trespass, when not restrained. **Ocmulgee Co.**, 112/528, 37 S. E. 749; **Putney**, 106/199, 32 S. E. 107; **Waters**, 106/758, 32 S. E. 854; **Woodstock**, 118/642, 45 S. E. 429. **Aliter**, **Evans**, 118/882, 45 S. E. 693. See **Chestatee Co.**, 118/255, 45 S. E. 267; **Jones**, 110/

222, 35 S. E. 375; **Camp**, 112/872, 38 S. E. 71, 52 L. R. A. 765.

Relief against. **Collins**, 142/703, 711, 83 S. E. 660.

Not restrained; general rule applied. **Powell**, 147/619, 95 S. E. 214.

Not enjoined; rule and exception. **Justice**, 104/717, 30 S. E. 941.

Continuing, restraint of. **Fla. Pine Co.**, 140/321, 78 S. E. 900.

Continuing, as ground for relief, though trespasser solvent. **Moore**, 146/178, 91 S. E. 14.

By seizure of crops, etc., as ground for relief. **Matthews**, 146/732, 92 S. E. 52.

Jurisdiction of proceeding to restrain, by cutting timber, in county of residence of agent. **Baker**, 127/649, 57 S. E. 62.

Trover suit, defenses to, as affecting election of money verdict. **Malsby**, 104/205, 30 S. E. 854.

Power of city court as to equitable defense in, and as to entry of judgment on bond of plaintiff. **Jesse French Co.**, 114/343, 40 S. E. 292.

Trust arising on contract to convey land, when enforced by decree. **Delkin**, 134/517, 68 S. E. 93.

As to corporate assets, not such as within peculiar jurisdiction of equity. **Lamar**, 101/270, 28 S. E. 286.

Beneficiary, church member was such, as to maintain equitable suit. **Harris**, 124/311, 52 S. E. 610, 2 L. R. A. (N. S.) 828.

Capable of execution by possibility, not allowed to fail for want of acceptance by nominated trustee. Dissent: Too vague and indefinite for enforcement here. **Prince**, 120/810, 811, 48 S. E. 412.

Estate, subjection of; and distribution of proceeds of sale of property. **Potts**, 131/198, 62 S. E. 77.

Express and implied. **Swift**, 138/229, 232, 75 S. E. 8; **Wilder**, 138/573, 75 S. E. 654; **Jones**, 138/730, 75 S. E. 1129.

Trust—(continued).

Fund invested in land by guardian, action to trace. *Jordan*, 118/544, 45 S. E. 439.

Implied, against vendee with notice of equitable title of minors. *Manning*, 135/597, 69 S. E. 1126.

Implied or resulting, not arise in favor of promisee in parol agreement to sell land on tender in time. *Lyons*, 108/574, 34 S. E. 721.

In holding of corporate assets for creditors, not such as gives equity peculiar jurisdiction. *Lamar*, 101/275, 28 S. E. 686.

Not impressed on fund in receiver's hands, for money collected by bank and not remitted before its insolvency. *Ober*, 118/396, 45 S. E. 382, 98 Am. St. R. 118.

Not "personal;" survivorship of power. *Wadley*, 138/226, 75 S. E. 325.

Petition to declare, not demurrable. *Waters*, 136/182, 71 S. E. 6.

Property, no cause alleged for aiding in misapplication of. *Ray*, 136/745, 72 S. E. 26.

Property or its proceeds, right to follow, discussed. *Ober*, 118/397, 45 S. E. 382, 98 Am. St. R. 118. Jurisdiction; suit for alleged trust fund, with prayer for discovery, not an equitable proceeding. *Williams*, 22 A. 657, 97 S. E. 249.

Ex maleficio, doctrine of, not enforced unless positive fraud accompany the promise. *Cassels*, 122/35, 49 S. E. 749, 68 S. E. 749, 68 L. R. A. 80, 106 Am. St. R. 91, 2 Ann. Cas. 554.

To devise land to daughter, separate writings construed together as creating. Beneficiary entitled to aid of equity to enforce. *McCreary*, 103/528, 29 S. E. 960.

Jurisdiction to appoint successors of trustees. *Harris*, 124/311, 52 S. E. 610, 2 L. R. A. (N. S.) 828.

Jurisdiction to order sale of estates for life and in remainder, on application of trustee. *Gunby*, 146/536, 91 S. E. 556.

Trustee's petition for removal of co-trustee, and prayer of cross-petition to fix defendant's individual rights, both

before the court here. *Crowley*, 114/135, 39 S. E. 904.

Trustee's purchase from beneficiary, when voidable; what necessary to uphold. *Collier*, 137/658, 664, 74 S. E. 275, Ann. Cas. 1913A, 1110.

Unconstitutional law, person seeking to enjoin enforcement must show infringement of his personal or property rights. *Plumb*, 103/686, 30 S. E. 759.

United States court, no relief in, not obtainable in State court. *Field*, 139/440, 77 S. E. 559.

Unsecured creditors can not have receiver save under statute. *Guilmartin*, 101/565, 29 S. E. 189.

Vacation hearing, relief that could not be granted on. *Georgia Casualty Co.*, 146/597, 91 S. E. 774.

Want of authority in, to order sale of minor's legal estate, or dispose of property of remainderman. *Powell*, 143/728, 85 S. E. 891.

Jurisdiction to render final judgment in, before appearance term, denied. *Booth*, 131/750, 63 S. E. 502.

Vendor's remedy against vendee and transferee of his bond for title; special judgment against land sold. *Morgan*, 148/123, 95 S. E. 986.

Venue of action in equity. *Ray*, 141/628, 81 S. E. 884; *Stone*, 140/487, 79 S. E. 122. Fully considered. *Railroad Com.*, 124/637, 53 S. E. 193.

Against insurance company, on purely equitable case, is in county of its residence. *Porter*, 145/543, 89 S. E. 609.

Against resident debtor and his transferee, a non-resident of the county. *Calvert Mortgage Co.*, 148/556, 97 S. E. 522.

Ancillary action by cross-bill, did not lie out of county of defendant's residence. *Atlanta Northern Ry. Co.*, 147/214, 93 S. E. 210.

By creditor against debtor and other creditor, where they reside in different counties. *Fourth National Bank*, 143/137, 84 S. E. 546; *Bryant*, 143/217, 84 S. E. 739.

Against residents and non-residents. *Massengale*, 148/97, 95 S. E. 975; *Bridges*, 148/99, 95 S. E. 964.

Venue of action—continued).

Governed by constitutional and statutory provisions. *Tennessee Fertilizer Co.*, 147/589, 95 S. E. 81.

In county of residence of defendant against whom substantial relief is prayed. *Smith*, 147/58, 92 S. E. 867; *Bruce*, 147/392, 94 S. E. 241; *Kelley*, 147/741, 95 S. E. 287; *A., B. & A. Ry. Co.*, 148/282, 96 S. E. 562; *Williams Co.*, 114/707, 40 S. E. 698.

In county of residence of either of two defendants, executors nominated in will. *Brown*, 147/546, 94 S. E. 993.

In county where transient defendant found; defendant residing in other county made party. *Crawford*, 142/734, 83 S. E. 667.

Jointly against vendee of land and his transferee, residing in different counties. *Morgan*, 148/123, 95 S. E. 986.

Of judgment creditor, to cancel executory contract of debtors residing in different counties. *McGarity*, 148/146, 95 S. E. 968.

Not in county of residence of agent of non-resident defendant. *Martin*, 134/34, 67 S. E. 536.

Not in county of residence of merely nominal defendant. *Smith*, 147/58, 92 S. E. 867; *Bruce*, 147/392, 94 S. E. 241; *Cooper*, 147/570, 94 S. E. 1006; *Brack*, 148/162, 96 S. E. 176.

To cancel bond for title, etc., was in county of residence of obligee. *Turman*, 145/312, 89 S. E. 214.

To cancel deed and recover land, is in county of defendant's residence, not where land lies. *Chosewood*, 146/804, 92 S. E. 646. See *Cain*, 146/372, 91 S. E. 119; *Southern Title Co.*, 137/478, 73 S. E. 661; *Frazier*, 145/642, 89 S. E. 743.

To cancel sales, against vendee and subvendee taking without notice. *Lowndes Lumber Co.*, 137/791, 74 S. E. 531.

To restrain officer from paying money was not in county of his residence, but in that of mortgagee. *Amsler*, 146/635, 92 S. E. 55.

Venue of action—(continued).

To stop pending proceeding at law, brought by non-resident. *Bernstein*, 148/110, 96 S. E. 1.

Against shareholders residing in several counties, to recover dividends paid them. *Carlisle*, 143/797, 85 S. E. 1010, Ann. Cas. 1917A, 973.

By trustee against stock subscribers residing in different counties. *Chappell*, 145/717, 89 S. E. 777.

For equitable relief as to matters in pending proceeding. *Bedgood*, 145/54, 88 S. E. 568.

To restrain levy, in county of judgment plaintiff's residence. *Malsby*, 127/726, 56 S. E. 988.

Against corporate officers (stockholders) residing in several counties. *Tatum*, 136/792, 72 S. E. 236, Ann. Cas. 1912D, 216.

When in county of defendant's residence; when in county where land lies. *Brown*, 137/338, 344, 73 S. E. 495, 39 L. R. A. (N. S.) 16.

To cancel conveyance under which creditor is in possession, or to recover possession. *Clayton*, 101/634, 28 S. E. 983.

Prayer for substantial relief against resident is essential to laying. *Smith*, 147/58, 92 S. E. 867; *Cooper*, 147/570, 94 S. E. 1006.

Against remainderman against whom substantial relief is prayed. *Powell*, 147/497, 94 S. E. 766.

Stock subscribers residing in different counties; action for benefit of creditors of corporation. *McKey*, 147/662, 95 S. E. 217.

Substantial relief against parties defendant residing in different counties. *Bird*, 147/50, 92 S. E. 872; *Babson*, 147/143, 93 S. E. 219.

Waiver of jurisdiction by non-resident who filed answer and prayed for relief. *Campbell*, 108/103, 33 S. E. 871.

Of jurisdiction by omitting to object after giving replevy bond. Equitable relief denied. *Hunter-Benn*, 144/580, 87 S. E. 775.

Waste, remainderman's right to injunction against. *Kollock*, 113/762, 39 S. E. 339.

Wife's equitable title, estoppel to assert, against creditor of husband, when raised. *Ford*, 140/670, 79 S. E. 576.

Secret equity not good as against husband's creditor on faith of his apparent title. *Dill*, 118/208, 44 S. E. 989.

Wills, probate of, not interfered with by court of equity. *Adams*, 129/611, 59 S. E. 269; *Field*, 139/439, 77 S. E. 559.

Probate proceedings, pending on appeal, not to be drawn into equitable petition. *Turner*, 145/603, 89 S. E. 700.

Jurisdiction of superior court to construe, and to declare as to validity of devises. *Trustees*, 141/391, 81 S. E. 238.

Year's support, petition in aid of, filed on trial of appeal from setting it apart, and involving title to land, demurrable for want of jurisdiction. *Mulherin*, 120/1081, 48 S. E. 437.

(2) Accounting.

Administrator and surety, accounting by; facts demanding recovery by heirs. *Mercer*, 145/289, 88 S. E. 966.

Demurrer by, to action for accounting, not well taken. *Strickland*, 147/494, 94 S. E. 766. No error in decree for account and settlement, in suit by heir against administrator and other distributees. *Wheeler*, 136/487, 71 S. E. 901.

Agent and associates liable for accounting as to secret profit. *Ausley*, 145/750, 89 S. E. 1071.

Accounting by, to principal, for moneys entrusted to be invested; recovery supported. *Brock*, 132/19, 63 S. E. 794.

Expenses of, how limited, on suit for accounting, etc. *Fricke*, 124/166, 52 S. E. 65.

Allegations showed no right of action for accounting. *Dickey*, 139/166, 76 S. E. 1017.

Auditor, matters of account referred to; and exceptions to his report not referred to jury. *Wilson*, 134/680, 68 S. E. 514.

Prayer for account abandoned before, case not recommitted for him to take it. *Jeter*, 110/308, 35 S. E. 166.

Cause of action; accounting and cancellation. *Woodward*, 148/239, 96 S. E. 323.

Claimant and defendant in fi. fa., accounting between, could not be had, on equitable amendment in aid of levy, without making such defendant a party. *Gibson*, 130/243, 60 S. E. 565.

Concurrent jurisdiction of law and equity as to accounting. *Huger*, 126/689, 56 S. E. 64.

Contract, accounting in lieu of damages on breach of, incidental to relief by injunction. *Walker*, 148/331, 96 S. E. 627.

Corporation, petition by, for accounting, against its director who bought its property at sheriff's sale, not demurrable. *Fricke*, 124/165, 52 S. E. 65; *Forlaw*, 124/262, 52 S. E. 898. Account for proceeds of corporate property sold; petition prevailed against demurrer. *Workingmen's Union Asso.*, 135/5, 68 S. E. 697.

Decree in proceeding for accounting, when not opened to allow plaintiff to charge defendant with additional items. *Gunn*, 107/147, 32 S. E. 833.

Ejectment, appropriate pleading necessary to obtain accounting by defendant to action of. *Hawks*, 141/423, 424, 81 S. E. 200.

Election of damages, no bar to prayer for accounting on contract breach. *Walker*, 148/326, 331, 96 S. E. 627.

Estate, accounting of, proper parties to. *Hanvy*, 140/691, 79 S. E. 772.

Account and settlement of; petition for equitable relief not demurrable as multifarious. *Miller*, 136/428, 71 S. E. 910.

Executor and beneficiaries of estate, accounting between, as to payments, commissions, fees, etc. *Jones*, 141/728, 730, 82 S. E. 451.

Equitable action for accounting by, held premature. **Field**, 144/54, 55, 86 S. E. 245.

Petition by attorneys to whom legatees had conveyed interest in estate, for account by. **Bunn**, 122/836, 50 S. E. 914.

Jurisdiction of settlement of accounts of executors and administrators. **Adair**, 136/1, 9, 70 S. E. 578.

Guardian, suit against, for account for fund invested. **Jordan**, 118/544, 45 S. E. 439.

Jurisdiction of action for accounting. **Griffin**, 116/310, 42 S. E. 482; **Huggins**, 117/159, 160, 43 S. E. 750; **Orr**, 117/195, 43 S. E. 527; **Gould**, 117/458, 43 S. E. 702; **Rogers**, 117/819, 45 S. E. 71. In case of agent furnished with funds to buy and ship goods. **Mitchem**, 139/519, 77 S. E. 627.

Law, action at, for accounting, so held; not in equity. **Guarantee Trust & Co.**, 148/311, 96 S. E. 561. See **Taylor**, 148/662, 97 S. E. 136.

Lien of minor son as to property used by father, on accounting. **Bank of Eton**, 146/464, 91 S. E. 476.

Limitation of action for accounting. **Slay**, 145/771, 89 S. E. 830.

Merger of prior suit at law into equitable action between same parties for accounting, etc. **Cooper**, 140/45, 78 S. E. 413.

Partition and accounting in equity. **Greer**, 138/664, 75 S. E. 1050. Verdict for undivided interest in land did not cover issues in action for accounting and partition. **Smith**, 141/629, 81 S. E. 895.

Partners, accounting between. **Houston**, 124/103, 52 S. E. 83; **McConnell**, 124/1038, 53 S. E. 698. Equitable jurisdiction of. **Huger**, 126/684, 56 S. E. 64.

Account between, without prayer for dissolution, where one seeks to exclude the other from participation. **Hogan**, 122/283, 50 S. E. 84.

Account and settlement prayed by partner, prima facie case made, though

discovery waived. **Garrett**, 104/84, 30 S. E. 685.

Account by executor and surviving partner; no error as to compensation and credit allowed him. **Hosher**, 146/525, 91 S. E. 780.

Accounting of surviving partner to legatees of deceased partner; auditor's findings upheld. **Maynard**, 147/178, 93 S. E. 289, L. R. A. 1918A, 81.

Account and settlement of partnership, petition for, not subject to demurrer. **Smith**, 139/484, 77 S. E. 639; and cit. Allegations stated no case for. **Callaway**, 146/632, 92 S. E. 43.

When member of partnership may have accounting against another member, without final winding up and dissolution. **Miller**, 111/654, 36 S. E. 961, 51 L. R. A. 504.

Account of partnership affairs, individual charges and claims of partners not included in, without special equitable reasons. Firm debts preferred. **Bishop**, 138/738, 75 S. E. 1119.

Part payment, accounting for, and for part of land to which title failed; defense upheld. **Wimpee**, 148/418 (dissent, 419), 96 S. E. 993.

Personal property (including mesne profits of land), heirs can not ordinarily have accounting for. **Smith**, 141/630, 81 S. E. 895.

Petition for accounting need not allege how much is due. **Gould**, 117/458, 43 S. E. 702.

For accounting, cancellation, etc. not subject to demurrer. **Owens**, 148/675, 97 S. E. 856.

For accounting, not demurrable. **Waters**, 136/182, 71 S. E. 6.

Plaintiff, accounting by, as to money received by him from unauthorized sale of his property by another, when required as condition of recovery of property from purchaser. **Garbutt**, 128/269, 57 S. E. 495, 13 L. R. A. (N. S.) 58.

Pledgee of transferred stock, right of, to accounting on liquidation of corpora-

tion's affairs. **Merchants &c. Bank**, 143/755, 85 S. E. 914.

Prayer for accounting, tender as condition to rescission excused on offer to do equity. **Reeves**, 140/101, 106, 78 S. E. 717.

Profits of land, accounting for, where plaintiff was to be compensated for sawing timber, not decreed. **Hall**, 140/765, 79 S. E. 852.

Ratification did not result from bringing action for accounting. **Fricker**, 124/166, 52 S. E. 65. **Effect of suit for accounting as ratification of sale.** **Board of Education**, 128/157, 163, 57 S. E. 359.

Sales of land conveyed to defendant, when no cause of action shown for accounting for proceeds of. **Wood**, 143/650, 85 S. E. 838.

Security-deed, grantor in, could maintain suit for accounting, against grantee's vendee in possession. **Coates**, 142/237, 82 S. E. 649. **Right of action for accounting against security-deed creditor who takes possession of land.** **Owens**, 148/675, 97 S. E. 856.

Settlement with person mentally unable to contract, action for accounting not barred by. **Taylor**, 138/41, 74 S. E. 694.

Stock, facts showed no right of action for account for profits on, in favor of vendor of land. **Heard**, 135/606, 70 S. E. 12.

Sureties to whom makers of note conveyed land, facts made case for accounting by. **Peyton**, 145/179, 88 S. E. 937.

Tenants in common, accounting between, on partition. **Turnbull**, 116/768, 43 S. E. 42.

Accounting between, no bar of limitation to action for, until notice of adverse holding. **Smith**, 141/630, 81 S. E. 895.

Executor of cotenant liable to action for accounting, who asserts adverse claim. **Coppedge**, 144/466, 87 S. E. 392.

Jurisdiction as to accounting against insolvent cotenant for profits of land. **Johnson**, 145/817, 90 S. E. 60.

Trustee and life-tenant, facts entitling cestui que trust to have accounting by. **Kollock**, 113/762, 39 S. E. 339.

Under void trust deed executed by bank for benefit of named creditors, petition for accounting by receiver of the bank; defenses discussed; intervention by the beneficiaries not allowed. **Clarke**, 113/1074, 39 S. E. 437.

Vendor and vendee on rescission of contract for sale of land, account between, on default in payment. **Lytle**, 122/459, 50 S. E. 402.

Who seeks to recover land of vendee's assignee, accounting required of. Equities of both considered. **Couch**, 142/22, 82 S. E. 459.

Warehouseman, accounting by, for funds from insurance and salvage, action lies for. **Farmers Ginnery &c. Co.**, 140/669, 79 S. E. 474.

Wife's suit for accounting as to property which went into husband's possession; when barred. **Barber**, 125/226, 53 S. E. 1017.

(3) Cancellation.

Agent employed to sell, cancellation of deed to; principal not in laches, and offering to do equity. **Reeves**, 140/101, 78 S. E. 717.

Alimony, cancellation of deed in suit for. **Parker**, 148/196, 96 S. E. 211.

Allegations sufficient for cancellation. **Bird**, 147/50, 92 S. E. 872.

Amendment; cancellation of deed prayed for on one ground, amendment not allowed to set up different ground. **Christian**, 145/284, 88 S. E. 986.

Arbitration proceeding, cancellation of, as cloud on title, limitation of action for. **Murray**, 144/614, 87 S. E. 1068.

Assignment unauthorized, cancellation of, as preliminary to recovery. **Whitehurst**, 140/151, 152, 78 S. E. 938.

Bond, no ground for cancellation of, that plaintiff has discovered proof exonerating him. **Griffin**, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 4 Ann. Cas. 866.

Bond for title, cancellation of, on petition of holder of option to buy land. *Turman*, 145/312, 89 S. E. 214.

Cancellation of deed to vendee of obligor in, and decree for conveyance to vendee of obligee, though bond non-transferable, on what facts. *Cowart*, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Breach of promise by grantee, cancellation of deed not decreed merely because of. *Christian*, 145/284, 88 S. E. 986.

Cloud on title, mere verbal claim or assertion of ownership is not. *Waters*, 106/758, 32 S. E. 854.

What necessary to authorize court to entertain an application to remove. *Hanesley*, 109/347, 34 S. E. 584.

When deed on immoral or illegal consideration is. *Watkins*, 118/375, 45 S. E. 260.

Effect of act of 1905. Execution gives no right "in or to the property" of defendant, and equitable petition does not lie to remove it as a cloud. *Mayor*, 124/750, 754, 53 S. E. 103.

Petition to remove, when demurrable. Rules, inconsistency of. When plaintiff must have possession of the land. He must be the true owner. *Weyman*, 122/539, 50 S. E. 492; *McMullen*, 125/435, 54 S. E. 97.

What necessary to constitute cloud. *McMullen*, 125/435, 54 S. E. 97.

Rules as to maintenance of action to remove. *Gilmore*, 137/275, 73 S. E. 364; *Howell*, 137/710, 74 S. E. 255.

Cancellation of deeds as. *Causey*, 106/188, 32 S. E. 138; *Berry*, 141/642, 81 S. E. 881; *Smith*, 139/10, 76 S. E. 362; *Miller*, 139/29, 76 S. E. 585; *Giddens*, 127/734, 56 S. E. 1014.

Wife's deed to secure payment of husband's debt. *Rountree*, 139/290, 77 S. E. 23. Cancellation of deed as, verdict denying, upheld. Evidence irrelevant to issue; that maker was non compos mentis, and signed on Sunday. issue; that maker was non compos mentis, and signed on Sunday. *Thomas*, 134/606, 68 S. E. 323.

Cancellation of deed as, properly

decreed under the facts. *Hinton*, 147/603, 95 S. E. 1.

Cancellation of deed as, for want of delivery and acceptance, though recorded. *Cowart*, 139/432, 77 S. E. 382.

Cancellation not decreed of non-recordable promise on no consideration, though actually recorded. *Witt*, 140/48, 78 S. E. 467.

Cancellation of deed as, and as a forgery. *Echols*, 140/678, 79 S. E. 557.

Composition between debtor and creditors, cancellation of agreement for. *Burgess*, 128/423, 57 S. E. 717.

Condition (abandonment of public improvement), cancellation of deed as for breach of, when not authorized. *City of Atlanta*, 135/377, 69 S. E. 571.

Cancellation of deed for violation of; parties, evidence, and charge to jury. *Groover*, 148/794, 98 S. E. 503.

Consideration, cancellation of contract as wanting in; petition not demurrable.

Ryman, 141/75, 80 S. E. 551.

Conveyance made to defraud creditor, cancellation of. *Helmken*, 138/200, 75 S. E. 3.

Cancellation of, when remedy, instead of suit to recover land. *Carr*, 128/623, 57 S. E. 875.

Court of law can not cancel deed. *Frazier*, 145/646, 89 S. E. 743.

Covenant (not condition precedent) on which deed was made, cancellation not obtained for breach of. *Moore*, 146/197, 91 S. E. 13.

Creditors. cancellation of deed as made to hinder and defraud, prima facie case for, under the evidence. *Webb*, 142/423, 83 S. E. 99.

Deed made to defeat, cause of action alleged. *Norton*, 148/652, 98 S. E. 76.

Death of plaintiff, when suit for cancellation of deed does not abate by. *Thompson*, 127/557, 56 S. E. 770.

Decree of divorce, cancellation of, for fraud; allegations subject to demurrer. *Conklin*, 148/640, 98 S. E. 221.

Deed, cancellation of. *Culver*, 132/297, 64 S. E. 82; *Stark*, 132/346, 63 S. E. 857; *Kehr*, 132/626, 64 S. E. 673;

Deed—Continued).

Workingmen's Union Asso., 135/5, 68 S. E. 697; **Jeter**, 135/22, 68 S. E. 787; **McClellan**, 135/95, 68 S. E. 1025; **Davis**, 135/116, 69 S. E. 172; **Manning**, 135/597, 69 S. E. 1126.

Cancellation of; burden of proof not carried by plaintiff, nonsuit results. **Shelton**, 148/128, 96 S. E. 3.

Cancellation of, authorized by facts. **Payton**, 148/486, 97 S. E. 69.

Cancellation in part, not obtained for ignorance of ownership of property. **Langston**, 147/318, 93 S. E. 892.

Cancellation of, cause for; necessary parties; no laches; offer to restore unnecessary. **Taylor**, 138/41, 74 S. E. 694.

Cancellation of; decree not effective to declare or vest title. **David**, 140/240, 78 S. E. 909.

Cancellation of, for fraud and invalid consideration; issue for jury. **Yates**, 148/264, 96 S. E. 427.

Cancellation of, for fraud (false promise) of wife inducing husband to execute it. **Pavlovski**, 134/704, 68 S. E. 511. Joint owner's promise to sell and pay off incumbrance, etc. **Jones**, 134/857, 68 S. E. 729, 137 Am. St. R. 276.

Cancellation of, for mental incapacity of grantor, undue influence of grantee, and non-delivery. **DeNieff**, 138/248, 75 S. E. 202.

Never delivered, cancellation of, in action by grantor against heirs of grantee. **Hall**, 148/812, 98 S. E. 549.

Cancellation of, not decreed at instance of party who combined to suppress competition at judicial sale. **Ruis**, 138/150, 74 S. E. 1081, 42 L. R. A. (N. S.) 1198.

Petition for cancellation of, not subject to demurrer for laches, etc. **Albritton**, 140/169, 170, 78 S. E. 723.

Cancellation of, when decreed and when not. **Hodnett**, 131/67, 61 S. E. 1124; **Pierce**, 131/99, 61 S. E. 1114; **Kehoe**, 131/269, 62 S. E. 185; **Turner**, 131/445, 62 S. E. 587; **Gaskins**, 131/459, 62 S. E. 581; **Tune**, 131/528, 62 S. E. 976.

Duress, cancellation of deed obtained by. **Hodges**, 146/624, 92 S. E. 49.

Ejectment, when cancellation of deed not granted on prayer of equitable amendment to action of. **Malone**, 101/194, 28 S. E. 689.

Employment, cancellation of contract of, that had failed. **Brousseau**, 148/651, 98 S. E. 79.

Exception agreed on in contract of sale, cancellation of deed for omission of, when not decreed. **Boyd Lumber Co.**, 146/794, 92 S. E. 534.

Execution, cancellation of. **Park**, 122/122, 57 S. E. 229.

Executory contract, cancellation of, as collusive arrangement to defeat debt; no evidence of such purpose. **McGarity**, 148/146, 95 S. E. 968.

Forgery, cancellation of deed as. **Smith**, 139/10, 76 S. E. 362.

Fraud and coercion, cancellation of deed for; personal representative of deceased grantor a necessary party. **Biggs**, 140/762, 79 S. E. 857. Cancellation for fraud or duress, when decreed. **Gilmore**, 137/274, 73 S. E. 364. Cancellation of deed as fraudulent conveyance, when not decreed in favor of creditor proceeding at law against several debtors. **Cunningham**, 135/249, 69 S. E. 101.

Cancellation of deed and mortgagee for, facts authorizing. **Casey**, 105/198, 31 S. E. 31 S. E. 427.

Allegations sufficient on demurrer. **Wallace**, 142/408, 83 S. E. 113. Creditor's petitions considered. **Maynard**, 138/549, 75 S. E. 582; **Shepherd**, 138/555, 75 S. E. 585. Limitation of action for. **Waters**, 124/349, 52 S. E. 425. Where maker was very old and mental faculties impaired; rights of heirs at law to sue. **Eagan**, 115/130, 41 S. E. 493. Not decreed, plaintiff not tendering repayment. **Bridges**, 127/679, 56 S. E. 1025.

Cancellation of deed procured by, which grantor supposed to be her will and testament. **Netherton**, 142/51, 82 S. E. 449.

Cancellation of deed and other papers, for; verdict authorized, though

- evidence in conflict. **Bridges**, 148/99, 95 S. E. 964.
- Grant**, cancellation of, as cloud on title. **Calhoun**, 104/343, 30 S. E. 773.
- Grantee** in possession cannot have cancellation for defective title, without what showing. **Mathis**, 146/749, 92 S. E. 213.
- Homestead land**, cancellation of deed of, made without order of court. **Denson**, 140/134, 78 S. E. 768.
- Illegal contract**, cancellation of. **Americus Ry. Co.**, 136/25, 70 S. E. 578.
- Insanity** of grantor, cancellation of deed for; action by his heirs defeated by their long delay. **James**, 140/739, 79 S. E. 782.
- Judgment void**, cancellation of. **Jordan**, 138/209, 75 S. E. 101.
- Jurisdiction** to cause forged deed to be delivered up and canceled. **Smith**, 139/10, 76 S. E. 362.
- Not in county of sheriff's residence, but in that of grantee in his deed sought to be canceled. **Coker**, 110/20, 35 S. E. 273.
- Acquired for cancellation, retained for injunction and other relief. **A., B. & A. Ry. Co.**, 148/282, 96 S. E. 562.
- Laches**, cancellation defeated by. **Wilkes**, 120/728, 48 S. E. 113; **Bryan**, 138/321, 75 S. E. 205.
- Land sale**, no right of cancellation or rescission of, in vendee not showing vendor's insolvency, or non-residence, or other equitable ground. **Henderson**, 143/547, 85 S. E. 741; **Houston**, 143/549, 85 S. E. 692.
- Lease, cancellation of, for fraud; cause of action not alleged. **Freeman**, 148/689, 98 S. E. 263.
- Legatee**, cancellation of deed for fraud and recovery of land by, against grantee of executor. **Hodges**, 126/848, 56 S. E. 76.
- Life-tenant**, cancellation of deed by, individually and as trustee for remaindermen, when not decreed. **LaPierre**, 145/851, 89 S. E. 1074.
- Mental incapacity**, cancellation of deed for. **Stephenson**, 141/561, 81 S. E. 851; **Connelly**, 126/656, 55 S. E. 916; **Gable**, 130/689, 61 S. E. 595. For mental incapacity and fraud; admissibility of evidence; instructions to jury. **Hubbard**, 148/238, 96 S. E. 327.
- Cancellation of lease for mental incapacity of three lessors, not obtained by proof of incapacity of two of them. **Barlow**, 120/1015, 48 S. E. 344.
- Misjoinder** of parties, petition for cancellation demurrable for. **Van Dyke**, 120/985, 48 S. E. 380.
- Mistake of fact**, cancellation under, when not set aside. **Woodside**, 113/877, 39 S. E. 400, 84 Am. St. R. 267.
- Mortgage**, cancellation of. **Emmett**, 132/593, 600, 64 S. E. 682. Action sustained. **Hendricks**, 134/552, 68 S. E. 298.
- Note and security conveyance**, petition for cancellation of, not subject to demurrer. **Camp Lumber Co.**, 142/84, 82 S. E. 492.
- Prayer for cancellation of, did not make proper an injunction against suit in city court. **Norton**, 130/391, 60 S. E. 1049.
- Cancellation of, for total failure of consideration. **Robinson**, 145/403, 89 S. E. 364.
- Offer to return valuable consideration** essential to petition for cancellation of deed. **Echols**, 140/679, 79 S. E. 557.
- Ordinary**, petition for cancellation of deed dismissed because of pending proceeding in court of. **Murray**, 129/269, 58 S. E. 841.
- Powers as to cancellation, etc., not vested in court of, nor in superior court on appeal. **Maloy**, 134/433, 68 S. E. 80.
- Parties necessary** to action, grantor and grantee are. **Brown**, 147/546, 94 S. E. 993; **Fordham**, 147/610, 95 S. E. 3; **Jackson**, 147/631, 95 S. E. 215; **A., B. & A. Ry. Co.**, 148/282, 96 S. E. 562; **Groover**, 148/794, 98 S. E. 503; **Lane**, 140/415, 78 S. E. 1082.
- No cancellation of deed without necessary defendants. **Malone**, 101/194, 28 S. E. 689.
- Cancellation of deed as void; right of action in bankruptcy trustee, not in creditors. **Wright**, 146/400, 91 S. E. 412.

- Cancellation not sought, defendant's grantor no necessary party. *Wardlaw*, 146/643, 92 S. E. 42.
- Petition for cancellation of deeds for fraud, injunction and receiver, etc., not demurrable.** *Jones*, 127/379, 56 S. E. 426.
- For cancellation of deeds and mortgages, and setting aside of division of land in kind, demurrable. *English*, 146/482, 91 S. E. 542.
- Too deficient for cancellation of contract, for failure of title, and for fraud. *Ruff*, 137/56, 72 S. E. 506.
- Plea, cancellation, as remedy, available by.** *McCall*, 120/661, 48 S. E. 200; *Reaves*, 120/727, 48 S. E. 199.
- Pleading, cancellation of deed not decreed for cause not embraced by.** *DeNieff*, 138/249, 75 S. E. 202.
- Prayer for cancellation substituted for prayer for damages, changed cause of action.** *Horton*, 115/66, 41 S. E. 253.
- To cancel, effect of omitting, in action for decree of title. *Tucker*, 148/47, 95 S. E. 672.
- Protection of party seeking, cancellation not decreed when not essential to.** *Hairlson*, 111/57, 36 S. E. 319.
- Quia timet, principle of, applied to cancellation of forged deed not enforced at the time.** *Smith*, 139/10, 76 S. E. 362.
- Petition to cancel recorded contract made no case under law as to. *Witt*, 140/48, 51, 78 S. E. 467.
- Sale contract, grounds for cancellation of; inadequacy of consideration, ignorance and dissipated habits, etc.** *Collier*, 137/658, 74 S. E. 275, Ann. Cas. 1913A, 1110.
- Security deed, cancellation of, without payment or tender of amount due.** *Beach*, 101/357, 28 S. E. 110.
- Cause of action by widow of debtor. *Owens*, 148/676, 97 S. E. 856.
- Right of cancellation of, in debtor after creditor and his vendee have long held possession. *Coates*, 142/237, 82 S. E. 649.
- Sheriff's deed, cancellation of, for excessive levy, and fraud; petition subject to general demurrer.** *Hutchinson*, 130/536, 61 S. E. 130.
- "Squatter," cancellation of deed not decreed in favor of plaintiff showing only prior possession as.** *Crawford*, 143/310, 85 S. E. 192.
- Stock issued on misrepresentation, when no ground for cancellation of.** *Fuller*, 137/370, 73 S. E. 647.
- Subscriptions to, procured by fraud of directors, cancellation of. *American National Bank*, 145/618, 89 S. E. 691. See *Empire Ins. Co.*, 146/818, 89 S. E. 1085.
- Tax deed, cancellation of, as cloud on title, at instance of owner, after redemption.** *Bennett*, 123/625, 51 S. E. 654.
- Tenant, prayer for cancellation of deed, by amendment to counter-affidavit in proceeding to evict, when not allowable.** *Patrick*, 122/80, 49 S. E. 806.
- Tender, what essential as condition precedent to cancellation.** *Booth*, 132/109, 63 S. E. 907.
- Title, cancellation of deed not decreed at suit of one without, other than grantor.** *Stanley*, 140/306, 78 S. E. 1064.
- Trust, cancellation of deed for failure of, not obtained against purchaser bona fide.** *Davis*, 148/117, 95 S. E. 980.
- Usury, cancellation of instrument for, not obtained without tender of principal sum due, with lawful interest.** *Weaver*, 146/142, 90 S. E. 864; *Patterson*, 146/364, 91 S. E. 116; *Matthews*, 146/732, 92 S. E. 52.
- Venue of action, in county of residence of grantor or of grantee.** *Brown*, 147/546, 94 S. E. 993.
- Voluntary deeds, cancellation of second of two, and establishment of copy of first.** *Toole*, 107/473, 33 S. E. 686.
- Water power, cancellation or rescission of contract touching development of, when not authorized.** *Columbus R. Co.*, 135/626, 70 S. E. 242.
- Water supply to town, cancellation of contract for, not decreed as ultra vires or without consideration.** *Hall*, 140/611, 79 S. E. 533.

Wife, cancellation of deed of, to husband, made without order of court; though they were living apart. Echols, 140/678, 79 S. E. 557.

Deed of, to settle debt of husband, sufficiency of allegations in action for cancellation of. Hickman, 145/368, 89 S. E. 330.

Will, cancellation of, as cloud on title; petition for, pending probate proceedings, not entertained. Adams, 129/611, 59 S. E. 269.

(4) Fraud and Mistake.

Allegations failing to show fraud in legal sense. Reynolds Co., 116/495, 42 S. E. 796.

General, of fraud, no ground for relief. Gould, 120/51, 47 S. E. 505.

Bidder at sale by administrator or sheriff, mistake of law as ground for relieving. Holmes, 140/217, 78 S. E. 903.

Fraud of purchaser deterring others from bidding; remedy for. Carr, 128/622, 57 S. E. 875.

Bona fide purchaser without notice, mistake not relieved in equity as against. Malette, 120/742, 48 S. E. 229.

Both parties, fraud of, as affecting right to recover. Sewell, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Cancel deed, fraud not proved in action to. Thompson, 127/558, 56 S. E. 770. Petition of creditors to cancel fraudulent conveyances or mortgages. Evans, 101/152, 28 S. E. 645.

Cognizance in equity, fraud peculiarly a matter for. Crawford, 139/539, 77 S. E. 826.

Consent decree not set aside at instance of consenting party alleging that, through accident and mistake, evidence in his possession which would have authorized a different decree was not introduced. Gray, 123/295, 51 S. E. 373.

Conspiracy to hinder secured creditor, multiplicity of suits, etc., as ground for interposition of equity. Johnson, 112/449, 37 S. E. 766.

Conveyance fraudulent, to conceal ownership; petition to subject the property to dormant judgment. Kruger, 111/383, 36 S. E. 794. Grantor's adminis-

trator cannot recover the property to pay debts. Boswell, 147/734, 95 S. E. 247.

Decree obtained by fraud, set aside. Big-ham, 114/456, 40 S. E. 303.

Deed, mistake as ground to reform; intention of the parties governs inquiry. Barnes, 136/264, 71 S. E. 163.

Delay in seeking relief, on ground of fraud, no bar where suit was promptly brought on discovery, and there was no question as to rights of third persons. Venable, 129/537, 59 S. E. 253.

Diligence, want of, to discover mistake. Maxwell, 117/467, 43 S. E. 704.

Rule of, as applied to defense on account of mistake in contract. Dolvin, 131/301, 310, 62 S. E. 198.

Enforcement of unambiguous contract not restrained, before reformation under proper pleadings. Shaw, 138/48, 74 S. E. 792.

Facts preventing correction of instrument for mistake. Boyd Lumber Co., 146/794, 92 S. E. 534.

Fraud did not authorize equitable relief here. Schmitt, 109/631, 35 S. E. 145.

Husband and wife in collusion, fraud as against, set up by cross-bill. Reaves, 120/727, 48 S. E. 199.

Ignorance of law, mistake arising from, no ground for relief against results thereof. Atlanta Tr. Co., 116/915, 43 S. E. 380.

Mistake of fact, due to, when not relieved. Langston, 147/318, 93 S. E. 892.

Imbecile, old and illiterate, fraud and imposition upon, as ground of relief. Matthews, 146/732, 92 S. E. 52.

Indorsement of note, fraudulent artifice by adding "without recourse" to, when no ground for relief. Baker, 144/502, 87 S. E. 659.

Insurance policy, fraudulent procurement of transfer of, and of order by ordinary approving "compromise," relief against. Empire Ins. Co., 140/141, 78 S. E. 935; Whitehurst, 140/148, 78 S. E. 938.

Instructions to jury on mistake, not require new trial here. Berry, 117/964, 44 S. E. 824.

Judgment, fraud as ground to set aside. **Jones**, 120/642, 646, 48 S. E. 134; **Giles**, 146/437, 91 S. E. 411. Must be that of the adverse party, or his counsel or agent. **Lanier**, 128/358, 57 S. E. 689.

Land, fraud of buyer of, as to measuring frontage, evidence did not show, so as to authorize decree against him. **Hammond**, 140/262, 78 S. E. 897.

In case of buying, at judicial sale, no relief from mistake of fact, if truth discoverable by reasonable diligence. **Keith**, 114/176, 39 S. E. 850. Purchaser not relieved for mistake, who at administrator's sale bought lot of land other than he intended. **Roberts**, 137/30, 72 S. E. 410.

Mistake of fact in measuring front of, evidence did not authorize relief. **Hammond**, 140/260, 78 S. E. 897.

Described in deed, equitable relief against mistake of fact as to. **Gabbett**, 137/143, 144, 72 S. E. 924.

Law, mistake of, (not of fact) in omitting matter from deed, when no ground for relief. **Caudell**, 127/1, 55 S. E. 1028.

Mistake of, (mutual) as to legal effect of note or receipt. **Dolvin**, 131/301, 62 S. E. 198. As to note and mortgage signed by one as agent of real maker. **Foddrill**, 131/790, 63 S. E. 350.

Mistake of, mutual, as to effect of instrument; what sufficient plea of. **Dolvin**, 125/699, 54 S. E. 706, 28 L. R. A. (N. S.) 785.

Mistake of, as ground to recover payments made, when denied. **Whitehurst**, 140/153, 154, 78 S. E. 938. As defense to recovery of money on contract of purchase, sustained. **Holmes**, 140/217, 78 S. E. 903.

Lease, doctrine of mistake not applied to, when some privileges destroyed by later legislation. **Lawrence**, 131/853, 63 S. E. 631, 19 L. R. A. (N. S.) 966, 15 Ann. Cas. 1097.

Mortgage, mistake in, as to land covered by it. **Carter**, 104/576, 31 S. E. 407.

Mistake, as ground for setting aside cancellation of. **Woodside**, 113/880, 39 S. E. 400, 84 Am. St. R. 267.

Mutual mistake as ground to reform contract. **Fambrough**, 138/47, 74 S. E. 762.

As cause to reform lease contract. **Mason**, 148/469, 96 S. E. 1042.

As to sufficiency of entry of credit on note, to constitute new promise, not relievable after bar of statute of limitations attached. **Moore**, 103/517, 30 S. E. 535.

Authorizing reformation. **Kelly**, 135/505, 69 S. E. 724.

Not corrected at suit of one not in privity with original parties. **Garlington**, 146/527, 91 S. E. 553.

Relief against, granted where reasonable diligence shown; not after unreasonable delay. **Aken**, 134/667, 68 S. E. 482.

Relief against, where wrong name of insured inserted in policy. **Niagara Fire Ins. Co.**, 134/667, 68 S. E. 611, 20 Ann. Cas. 363.

Negligence of plaintiff did not so appear as to bar relief against mistake. **Gabbett**, 137/144, 72 S. E. 924; **Richardson**, 137/432, 73 S. E. 649. No relief against mistake resulting from. **Woodside**, 113/880, 39 S. E. 400, 84 Am. St. R. 267; **Mills**, 148/23, 95 S. E. 698.

One party, mistake of, fraud of the other, as ground for reforming instrument. **Venable**, 129/537, 59 S. E. 253.

Law as to mistake of fact by, not applied to issue of mutual mistake of law. **Dolvin**, 131/307, 62 S. E. 198.

Contract not reformed for mistake of, but could be rescinded. **Quiggle**, 125/98, 54 S. E. 74.

Payment, mistake in, as ground for relief. **McDonald**, 129/245, 58 S. E. 860, 12 Ann. Cas. 701.

Reformation, mistake as ground for. **Dela-ware Ins. Co.**, 126/385, 55 S. E. 330, 7 Ann. Cas. 1134; **Nelson**, 129/35, 58 S. E. 697; **Turner**, 129/89, 58 S. E. 657; **Venable**, 129/537, 59 S. E. 253; **Kitchens**, 121/294, 48 S. E. 945. Mistake of fact by one party and fraud by

- the other, as ground for. **Dannelly**, 131/699, 63 S. E. 257. Reformation for mistake, refused. **Campbell**, 142/434, 83 S. E. 105.
- Release**, mistake as to contents of contract of, when no ground for rescinding. **Jossey**, 109/439, 34 S. E. 664. See **Petty**, 109/675, 35 S. E. 82. Fraud in obtaining contract and offer to rescind, shown without resort to equity, as against party setting up contract of release. **Houser**, 9 A. 766, 72 S. E. 276.
- Relief on ground of mistake**. **DeVane**, 133/472, 66 S. E. 245; **Adkins**, 133/465, 66 S. E. 21, 134 Am. St. R. 221; **Murray**, 133/514, 66 S. E. 267; **Wade**, 133/613, 66 S. E. 922; **Long**, 133/691, 66 S. E. 894; **Jackson**, 133/749, 66 S. E. 918; **L. & N. R. Co.**, 133/763, 764, 66 S. E. 1088; **Central R. Co.**, 123/366, 51 S. E. 469; **Singer**, 117/92, 43 S. E. 755; **Perkins Lumber Co.**, 117/394, 43 S. E. 696. Mistakes relievable in equity. **DuBignon**, 106/320, 32 S. E. 102; **Floyd**, 109/786, 35 S. E. 172. Against fraud. **Carter**, 104/576, 31 S. E. 407. Fraud pending suit, rendering impossible the specific relief sought, will not deprive a court of equity of jurisdiction to grant other relief appropriate to the changed status. **Everett**, 127/103, 56 S. E. 123, 119 Am. St. R. 324.
- Sale of land**, mistake as ground of reforming contract for. **Richardson**, 137/432, 73 S. E. 649.
- Settlement** obtained by fraud, petition to set aside, when not demurrable for laches and on other grounds. **Taylor**, 138/41, 74 S. E. 694.
- Stock subscription**, relief against fraud in obtaining. **Georgia Portland Cement Co.**, 143/84, 84 S. E. 461; **Gress**, 135/60, S. E. 834, 31 L. R. A. (N. S.) 900. Relief not afforded upon allegations of this petition. **Rogers**, 137/555, 73 S. E. 848.
- Timber per acre**, apportionment of price for mistake of fact in sale of. Code sections that are not applicable. **Martin**, 120/1079, 48 S. E. 420.
- Title to land**, fraud concerning taking of, as ground for relief in. **Wilson**, 130/677, 61 S. E. 530.
- Trustee's conveyance** attacked for fraud without equitable pleadings. **Bourquin**, 110/440, 35 S. E. 710.
- Unconscientious advantage** from mistake, allegation showing, not demurrable. **Richardson**, 137/432, 73 S. E. 649.
- Voluntary conveyance**, character of evidence showing mistake to authorize reformation of. **Clark**, 141/437, 438, 81 S. E. 129.
- Will**, mistake in, as to the number of a lot devised; petition to be allowed to show intention of testator, by proof, dismissed on demurrer. **Oliver**, 121/836, 49 S. E. 743, 104 Am. St. R. 185. Fraud in execution of, no jurisdiction of. **Turner**, 145/603, 89 S. E. 700.
- Writ of error**, fraud of opposing counsel, resulting in dismissal of, when no equitable relief for. **Beeland**, 145/839, 90 S. E. 46.
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- (5) **Laches, Limitations, Stale Demands.**
- Administration**, laches of applicant for, did not appear. **McCranie**, 139/792, 77 S. E. 1064, 45 L. R. A. (N. S.) 1073.
- Allegations** showed no bar by laches. **Bird**, 147/50, 92 S. E. 872. General allegation of want of laches, when ineffective. **Berryman**, 145/136, 88 S. E. 682.
- Application** was too late for relief, after litigation resulting in judgments, breach of delivery bonds, etc. **Bearden**, 101/169, 28 S. E. 678.
- Award on arbitration**, laches as bar to relief. **Murray**, 144/614, 87 S. E. 1068.
- Bankruptcy**, action of trustee in, not barred by laches. **Beasley**, 144/381, 87 S. E. 293.
- Bar to action**, when interposed by court of, without inquiring as to formal plea of statute of limitations. **Reynolds Co.**, 116/502, 42 S. E. 796.
- Equitable, as result of delay in bringing suit. **Cheney** 125/168, 53 S. E.

Bar—(Continued).

1003; **Whitley**, 121/521, 49 S. E. 600; **McWhorter**, 121/541, 49 S. E. 592.

To relief, by laches. **Donaldson**, 109/832, 35 S. E. 277; **Durant**, 107/467, 33 S. E. 478; **Word**, 107/780, 33 S. E. 691; **Wilkins**, 113/31, 38 S. E. 374, 84 Am. St. R. 204; **Woodside**, 113/880, 39 S. E. 400, 84 Am. St. R. 267; **Sparks**, 113/1111, 39 S. E. 470; **Maxwell**, 117/467, 43 S. E. 704; **Griffin**, 119/138, 46 S. E. 66; **Glover**, 119/696, 46 S. E. 824; **Latimer**, 119/887, 47 S. E. 322; **Whitley**, 121/521, 49 S. E. 600; **McWhorter**, 121/541, 49 S. E. 592; **City of Elberton**, 123/1, 50 S. E. 977; **Weslosky**, 123/312, 51 S. E. 426; **Cheney**, 125/168, 53 S. E. 1003; **Palmer**, 126/521, 55 S. E. 229; **Hodges**, 126/848, 56 S. E. 76; **Venable** 129/537, 59 S. E. 253; **A., B. & B. Ry. Co.**, 129/557, 59 S. E. 220. None here. **Athens Terminal Co.**, 129/894, 58 S. E. 891; **Craddock**, 129/823, 60 S. E. 193; **Pierce**, 131/99, 61 S. E. 1114; **Pusser**, 132/286, 64 S. E. 75, 22 L. R. A. (N. S.) 571; **Crawford**, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932; **Basch**, 135/518, 68 S. E. 75; **Aken**, 134/665, 68 S. E. 482; **Cohen**, 137/554, 73 S. E. 749; **Spruell**, 137/721, 725, 74 S. E. 264; **Bryan**, 138/321, 75 S. E. 205; **Southern Cotton Mills**, 138/504, 75 S. E. 611; **Beeland**, 145/842, 90 S. E. 46; **Cureton**, 120/565, 48 S. E. 162; **Wilkes**, 120/728, 48 S. E. 113. Laches did not appear. **Marshall**, 145/112, 88 S. E. 943; **L. & N. R. Co.**, 145/594, 89 S. E. 693. Laches no bar; delay induced by defendant's statement. **Coates**, 142/237, 240, 82 of law. **Rigell**, 142/357, 358, 82 S. E. S. E. 649. Bar not raised as a matter of law. **Rigell**, 142/357, 358, 82 S. E. 1057. No bar on account of laches, under peculiar facts, although thirty years intervened. **Kelly**, 135/505, 69 S. E. 724. No bar from laches on facts shown. **Taylor**, 138/41, 74 S. E. 694; **Richards**, 138/691, 76 S. E. 64; **Clark**, 138/726, 75 S. E. 1128.

Bid disregarded at public sale of land; relief barred by laches. **Hardin**, 140/263,

78 S. E. 1073, 47 L. R. A. (N. S.) 896.

Bond for title, laches not imputed to holder of, who delayed tender for five years. **Clower**, 140/128, 78 S. E. 714.

Cancellation of deeds for fraud, laches as bar to. **Smith**, 144/576, 87 S. E. 772.

Of deed, laches no bar to, on facts alleged. **Carter**, 136/700, 71 S. E. 1047.

Of deeds for insanity of deceased grantor defeated by laches of heirs. **James**, 140/739, 79 S. E. 782.

Of forged deed as cloud on title, laches as to, not charged to owner of land in possession. **Smith**, 139/10, 76 S. E. 362. Laches not charged to wife remaining in possession of land, as to moving to cancel her deed. **Echols**, 140/678, 79 S. E. 557.

Contract, laches or negligence may be such as to prevent relief against error in. **Commercial Assurance Co.**, 130/209, 60 S. E. 554.

Decree of divorce, laches in moving to set aside, is ground for denying motion. **McConnell**, 135/831, 70 S. E. 647.

Plaintiffs not in laches as to setting aside, for fraud. **Bigham**, 114/457, 40 S. E. 303.

Delay of eighteen months, plaintiffs not held in laches from. **Georgia Portland Cement Co.**, 143/84, 84 S. E. 461. **Delay of 16 months in offer to restore value received, in rescinding for fraud, was bar.** **Jordy**, 139/325, 77 S. E. 162. Laches and delay as reasons for denying relief. **Reynolds Co.**, 116/495, 42 S. E. 796. Long delay making ascertainment of truth difficult, though no statutory bar. **Monroe**, 147/340, 94 S. E. 219. Remedy not barred by laches; failure of nephew to sue uncle for five years. **Delkin**, 134/517, 68 S. E. 93. Action of husband against former wife, within seven years. **Pavlovski**, 134/705, 68 S. E. 511.

Demurrer on ground of laches, without merit. **Lester**, 144/143, 86 S. E. 321.

General, for laches, when not sustained. **Gress**, 135/65, 68 S. E. 834, 31 L. R. A. (N. S.) 900.

Effect of omission to act or defend. **Bank of Doerun**, 148/799, 98 S. E. 467; cf.

Groover, 148/794, 98 S. E. 503; **Hall**, 148/812, 98 S. E. 549.

Election as to local tax for schools, laches as bar to relief on account of irregularity in. **Wilson**, 143/362, 85 S. E. 198.

Fraud, laches as bar to relief from result of. **Mills**, 148/23, 95 S. E. 698; **Conklin**, 148/640, 98 S. E. 221.

Of promoter in sale of stock; laches as bar to relief. **Frost**, 144/26, 85 S. E. 1028.

In settlement, delay of seven months after discovery of, not prevent relief here. **Oliver**, 125/637, 54 S. E. 732.

Laches, as affecting right to complain of. **Marietta Fertilizer Co.**, 4 A. 249, 252, 61 S. E. 149.

Guardian, action to declare trust in land over twenty years after settlement of, with ward, too late. **Bennet**, 139/25, 76 S. E. 568.

Insurance agent and insured, effect of laches of. **Springfield Ins. Co.**, 132/687, 64 S. E. 1074; **Athens Ins. Co.**, 132/703, 64 S. E. 993.

Insured not held in laches who did not discover mistake in policy for nearly three months and after loss by fire. **Niagara Fire Ins. Co.**, 134/667, 68 S. E. 611, 20 Ann. Cas. 363. Not imputed on omission to read policy for a year after its issuance. **Overland Motor Co.**, 147/63, 92 S. E. 931.

Judgment, in moving to set aside, creditor or not in laches. **Seagraves**, 143/573, 580, 85 S. E. 760.

Laches in not availing of defenses which might have been made before rendition of. **Griffin**, 105/475, 30 S. E. 416.

Laches in allowing to stand three years prevents grant of relief against it. **Field**, 124/685, 52 S. E. 885.

Laches as bar to relief of one seeking to set aside. **Berry**, 111/118, 36 S. E. 459.

Land, no bar from laches in action to recover, on legal title, no equitable relief prayed. **Bowen**, 135/567, 69 S. E. 1115.

Laches as bar to suit for. **Holmes**, 106/864, 33 S. E. 216.

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Limitation, debt barred by, no action to collect it by enforcing equitable lien on land conveyed to creditor, and parol agreement for him to hold it as security. **Story**, 110/65, 35 S. E. 314.

When no bar to suit brought in time less than that in which prescription could have ripened. **Pierce**, 131/99, 61 S. E. 1114.

Lis pendens, laches in prosecution of, as affecting notice by. **Tinsley**, 105/285, 31 S. E. 174; **Bridger**, 126/821, 56 S. E. 97, 8 L. R. A. (N. S.) 463, 115 Am. St. R. 118.

Mandamus, delay in applying for. **Mattox**, 141/649, 81 S. E. 861.

Mortgage execution, laches in non-enforcement of, not implied. **Redding**, 144/100, 86 S. E. 241.

Non-action after informal notice, not treated as laches. **Anderson**, 147/455, 94 S. E. 574, L. R. A. 1918B, 894.

Petition was not demurrable for laches. **Albritton**, 140/169, 78 S. E. 723.

Laches of plaintiff did not appear from face of. **Gabbett**, 137/144, 147, 72 S. E. 924; **Richardson**, 137/432, 73 S. E. 649.

Pleading or evidence, where no issue in, as to laches, relief not refused on that ground. **Long**, 133/691, 66 S. E. 894.

Sale void, action to set aside in six years, when not barred by laches. **Benedict**, 122/412, 50 S. E. 162.

Son who obtained conveyance from mother was not entitled to urge laches, in action of other children during her lifetime. **Manning**, 135/597, 69 S. E. 1126.

Stale demand. **Cheney**, 125/168, 53 S. E. 1003. Not favored. **Wilkes**, 120/729, 48 S. E. 113.

Doctrine of, when applicable. **Ellis**, 112/481, 37 S. E. 739.

Doctrine of, available to defendant only; not to complainant to restrain enforcement of legal right. **Ga. R. Co.**, 124/620, 53 S. E. 251.

Dismissal of petition asserting. **Crawford**, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932; **Baker**,

134/138, 67 S. E. 541; *Basch*, 134/518, 68 S. E. 75.

Stockholder alleging corporate sale was ultra vires, laches as ground for denying relief to. *Bridges*, 136/251, 71 S. E. 161.

Taxpayers who act in less than a month, after illegal contract entered on the proper minutes, laches not chargeable to. *Manly Co.*, 114/246, 40 S. E. 274. Laches of citizens deprived them of relief against extraordinary tax levy. *Holt*, 118/895, 45 S. E. 690.

Not in laches as to complaint against declaration of result of election. *Tolbert*, 134/295, 67 S. E. 826, 137 Am. St. R. 222; *DuPre*, 134/317, 67 S. E. 876.

Trade-name, laches as ground for refusing relief on evidence as to fraudulent infringement upon right to. *Creswill*, 133/837, 67 S. E. 188, 134 Am. St. R. 231, 18 Ann. Cas. 453.

Wife, laches of, in not sooner ascertaining that husband took to himself title to her land. *Dill*, 118/210, 44 S. E. 989.

Laches not imputed, under allegations of, as to misconduct of husband, lately discovered. *Lemon*, 141/449, 81 S. E. 118.

(6) Reformation.

Agent, note and mortgage signed by, reformation by adding maker's name. *Foddrill*, 131/790, 63 S. E. 350.

Amendment of petition, prayer for reformation by. *Shockley*, 144/507, 87 S. E. 671.

Reformation of deed prayed by, when a new and distinct cause of action. *Venable*, 118/156, 45 S. E. 29.

Bill of sale, reformation of, in foreclosure proceeding. *Nelson*, 129/35, 58 S. E. 697.

Bond for title, reformation of, so as to show sale by acre instead of by tract, authorized by evidence. *Adams*, 138/306, 75 S. E. 321.

Certificate of preferred stock, reformation of, not obtained, so as to give lien in preference to creditors. *Jefferson Banking Co.*, 146/383, 91 S. E. 463.

Consent to deed, reformation, as affecting. *Clarke*, 113/22, 38 S. E. 323.

Reformation of deed by restoring words "more or less," omitted by, when not decreed. *Campbell Coal Co.*, 142/434, 83 S. E. 105.

Contract, reformation of, what necessary, to authorize. *Central R. Co.*, 123/374, 51 S. E. 469. Facts authorizing. *Kitchens*, 121/294, 48 S. E. 945.

Reformation of, necessary, where it does not speak the true agreement. *Swindell*, 122/17, 49 S. E. 753.

Corporation, reformation of deed to officer of, to secure debt to corporation. *Greenfield*, 122/305, 50 S. E. 111.

Deed, reformation of. *Waters*, 124/349, 52 S. E. 425; *Sheppard*, 114/411, 40 S. E. 282. Compare *Weaver*, 114/165, 39 S. E. 874. Facts authorizing. *Clarke*, 113/21, 38 S. E. 323. Allegation made no case for. *Cobb Real Estate Co.*, 138/589, 75 S. E. 652.

Reformation of, as to quantity of land, and conveyance by tract, when not granted. *Ga. &c. Devel. Co.*, 134/674, 68 S. E. 514.

Reformation of, for mistake of fact in measurement, and for fraud, evidence made no case for. *Hammond*, 140/260, 78 S. E. 897.

Reformation of, not decreed, where no accident, mistake, or fraud of administrators. *Greer*, 141/309, 80 S. E. 1002.

Reformation of, not so decreed as to make a contract for the parties, or to defeat the contract as made. *Hammond*, 140/262, 78 S. E. 897.

Description of land, to correct error in. *Phillips*, 148/104, 95 S. E. 969. Reformation not decreed where plaintiff signed bond for title knowing it did correctly describe the land. *Bonds*, 102/163, 29 S. E. 218.

Reformation of bond for title for mutual mistake in. *Shockley*, 144/507, 87 S. E. 671.

Reformation of deed by supplying land district, section, and county, omitted by mistake of scrivener. *Allen*, 141/226, 80 S. E. 713. Reformation of

deed erroneously describing premises, or corporate name of grantee. *Rosser*, 102/165, 29 S. E. 171.

Reformation of deed for mistake in; evidence did not authorize direction of verdict. *Wiseman*, 147/372, 94 S. E. 252.

Reformation of deed or mortgage for mistake or omission in. *Kerchner*, 106/439, 32 S. E. 351.

Enforcement and reformation, effect of prayer for both in the same suit. *Trust Co.*, 119/672, 46 S. E. 855.

Both may be sought in one suit; allegation insufficient for both purposes. *Delaware Ins. Co.*, 126/385, 55 S. E. 330, 7 Ann. Cas. 1134. Reformation of contract not attempted, it must be enforced as written. *Clayton*, 138/735, 76 S. E. 63.

Evidence required, for reformation, character of. *Robertson*, 148/81, 95 S. E. 973.

Reformation of deed, necessity for, to admit evidence. *Oliver*, 141/126, 80 S. E. 630.

Express trust, reformation of contract in parol to show, not decreed. *Pound*, 146/434, 91 S. E. 405.

Fraud in misrepresenting contents, reformation of contract for, when not granted. *Weaver*, 134/149, 67 S. E. 662.

Of buyer who prepared it, reformation of deed for, where seller not in laches. *Gabbett*, 137/143, 144, 72 S. E. 924.

In procurement, reformation of deed on account of. *Brooks*, 138/310, 75 S. E. 157.

Husband to wife, reformation of deed from, not giving terms of the agreement between them. *Rigell*, 142/357, 82 S. E. 1057.

Indorsement of commercial paper, reformation of, not granted because plaintiff knew not of its legal effect. *Baker*, 144/502, 87 S. E. 659.

Insurance policy, reformation of, not warranted by allegations here. *Trust Co.*, 119/672, 46 S. E. 855. For fraud or mistake, to make it accord with oral agreement. *Overland Motor Co.*, 147/

63, 92 S. E. 931. For mistake in name of insured. *Niagara Fire Ins. Co.*, 134/667, 68 S. E. 611, 20 Ann. Cas. 363. When not necessary, in order to avoid a defeat of liability thereon. *Springfield Ins. Co.*, 132/687, 64 S. E. 1074. Compare *Athens Ins. Co.*, 132/703, 64 S. E. 993.

Mistake, reformation for, essential to prevent enforcement of unambiguous contract for sale of timber. *Shaw*, 138/48, 74 S. E. 792.

Reformation for, not decreed on general allegations, or at instance of volunteer not a party to the instrument. *Gould*, 120/51, 47 S. E. 505. Strength of evidence to justify. *Newberry*, 146/679, 92 S. E. 67. For mistake of one party, accompanied by fraud of the other. *Venable*, 129/537, 59 S. E. 253. For mutual mistake. *Right*, 139/379, 77 S. E. 390. For mutual mistake of law, when not granted on second equitable petition. *Perrin*, 142/394, 83 S. E. 102. For mutual mistake of law, no proper case for. *Porter*, 145/787, 89 S. E. 838; *Arlington Lumber Co.*, 145/872, 90 S. E. 50. Mutual mistake in contract, both of expression and of omission; cause alleged. *Mason*, 148/469, 96 S. E. 1042.

Reformation of deed for, decreed. *Barnes*, 136/264, 71 S. E. 163. Facts not supporting allegation and prayer for. *Caudell*, 127/1, 55 S. E. 1028. For mutual mistake, when not granted after twenty-three years. *Aken*, 134/665, 68 S. E. 482.

When reformation necessary, before enforcement of contract will be enjoined because of. *Perkins Lumber Co.*, 117/394, 43 S. E. 696.

Names of donees, reformation of deed for mistake in omitting. *Kelly*, 135/505, 69 S. E. 724.

Omission of agreement, reformation of deed for; not for accident or mistake, or for fraud. *Rawlings*, 143/726, 85 S. E. 851.

Of agreed exception, reformation of deed for, when not decreed. *Boyd Lumber Co.*, 146/794, 92 S. E. 534.

Of material terms, right of reformation of contract for. **Dannelly**, 131/694, 63 S. E. 257.

By accident or mistake, reformation of contract for. **Fleming**, 114/634, 40 S. E. 792.

Parol agreement between vendees, reformation of deed to conform to, when not obtained. **Pound**, 146/434, 91 S. E. 405.

Parties proper, no reformation of deed without. **Lively**, 142/204, 82 S. E. 545. Not effective at suit of grantor's prospective heir. **Pidcock**, 145/103, 88 S. E. 564. Reformation of instrument, as a general rule, not decreed at instance of one not a party, to it, but a mere volunteer. **McWhorter**, 123/247, 51 S. E. 288. Not obtained without making party the person who executed the instrument. **Holland**, 147/479, 94 S. E. 561.

Petition for reformation of deed, when not demurrable by administrator of of grantor. **Griffin**, 101/720, 29 S. E. 29. Allegations sufficient. **Summerour**, 148/499, 97 S. E. 71. Pleadings not authorizing. Dissent in **Wimpee**, 148/420, 96 S. E. 993.

Must give copy of the instrument; necessary allegations. **Delaware Ins. Co.**, 126/380, 55 S. E. 330, 7 Ann. Cas. 1134.

Prayer for reformation, when necessary to warrant introduction of parol testimony. **Wellmaker**, 123/201, 51 S. E. 436.

Remedies of reformation and rescission of contract, when applied; when relief refused. **Jordy**, 139/325, 77 S. E. 162. Reformation can only insert what was omitted, or strike what was included, by mistake of the parties. **Georgia R. &c. Co.**, 147/349, 94 S. E. 218.

Sale, reformation of contract of, for mistake in omitting article sold. **Fambrough**, 141/794, 82 S. E. 249. For mutual mistake in omitting items of personal property. **Fambrough**, 138/47, 74 S. E. 762.

Second conveyance, reformation of deed not obtained by grantee in, not in priv-

ity with grantee in first. **Garlington**, 146/527, 91 S. E. 553.

Sheriff's deed, allegations made no case for reformation of. **Wade**, 143/26, 29, 84 S. E. 65.

Specific performance and reformation can not be had in the same proceeding. **Harris**, 103/324, 29 S. E. 929.

Striking recital of number of acres of land to be conveyed, not obtained. **Baker**, 148/267, 96 S. E. 428.

Voluntary deed, reformation of, not decreed on petition of grantee; rule and exceptions. **Turner**, 129/89, 58 S. E. 657. For mistake of scrivener as to intention of grantor. **Clark**, 141/437, 438, 81 S. E. 129.

(7) Rescission.

Action, equitable, for rescission of contract by deed. **Davis**, 135/116, 69 S. E. 172.

Rescission and return of money received, when not required before suit. **Burgess**, 128/423, 57 S. E. 717. When rescission and return of property not condition precedent to action to set aside contract of dissolution between partners. **Oliver**, 125/637, 54 S. E. 732.

Concealment of material facts, rescission for. **Oliver**, 118/362, 45 S. E. 232.

Contract, rescission of; what essential. **Wimpee**, 148/420, 96 S. E. 993.

Defect in grantor's title, rescission for; what essential to action by grantee in possession. **Mathis**, 146/149, 92 S. E. 213.

Deficiency in quantity of land described in sale, rescission for. **Kendall**, 126/345, 55 S. E. 41.

Election between grounds for rescission, error in compelling. **Allred**, 113/441, 39 S. E. 101.

Fraud, rescission for. **Bacon**, 117/207, 43 S. E. 482; **Mashburn**, 117/567, 44 S. E. 97; **Equitable Loan Co.**, 117/668, 44 S. E. 320. 62 L. R. A. 93, 97 Am. St. R. 177; **Silvey**, 123/814, 51 S. E. 748, 1 L. R. A. (N. S.) 386.

As ground for rescission, unless creditors acquire superior rights. **Gress**, 135/60, 68 S. E. 834, 31 L. R. A. (N. S.) 900.

By representations in sale of land, allegations made no case for rescission for. **Bigham**, 140/112, 78 S. E. 809.

Rescission of contract for exchange of land and cancellation of deed and mortgage, because of fraud, facts authorizing. **Casey**, 105/198, 31 S. E. 427.

Mistake, rescission for. **Central R. Co.**, 123/374, 51 S. E. 469; **Quiggle**, 125/98, 54 S. E. 74.

As to contents of contract, rescission for, when not granted. **Jossey**, 109/439, 34 S. E. 664.

Negligence as bar to relief, where rescission prayed for. **Jossey**, 109/439, 34 S. E. 664.

Particular item, rescission as to, not granted without offer to restore status as to all matters. **Swift**, 129/848, 60 S. E. 182.

Petition for rescission of contract, defective. **Butler**, 122/371, 50 S. E. 132.

For rescission for fraud and misrepresentation and for want of title in vendor, good against demurrer here. **Allred**, 113/441, 39 S. E. 101.

Reformation, distinct from rescission. **Dannelly**, 131/700, 63 S. E. 257.

Sale, rescission of, on non-payment where improvements made; elements of accounting, etc. **Stringfellow**, 143/340, 85 S. E. 108.

Stock subscription, rescission of, for misrepresentations of officers and promoters of corporation. **Georgia Cement Co.**, 143/84, 84 S. E. 461.

Tender of repayment or restoration as condition precedent to rescission. **Booth**, 132/109, 63 S. E. 907.

As condition of rescission, when excused, on offer to do equity, etc. **Reeves**, 140/101, 106, 78 S. E. 717.

(8) Specific Performance.

Absolute right, specific performance not demandable as; not granted unless equitable and just. **Kirkland**, 106/530, 32 S. E. 632.

Acceptance of offer to sell was conditional; specific performance not decreed. **Larned**, 114/209, 39 S. E. 855.

Varying in terms from offer to sell, specific performance not obtained. **Wiggins**, 139/297, 77 S. E. 157.

Action not construed as seeking specific performance, but as for price of land. **Tompkins**, 139/378, 77 S. E. 623.

Amendment, action for specific performance changed by, to one for damages from breach of contract. **Lane**, 139/93, 99 76 S. E. 874.

Child, specific performance of parol agreement to adopt, after death of foster parent. **Crawford**, 139/658, 78 S. E. 30, 44 L. R. A. (N. S.) 773.

Compensation for defects, doctrine of specific performance with, discussed and applied. **Phinazy**, 111/350, 36 S. E. 796, 50 L. R. A. 680, 78 Am. St. R. 207.

Condition precedent, specific performance not decreed without allegation of happening of. **Nelson**, 135/572, 69 S. E. 1118.

Consideration of consent to a judgment of probate as to a void will, specific performance of agreement to convey land in. **Fortner**, 121/26, 48 S. E. 694.

Contract here was sufficiently explicit to be basis of decree of specific performance. **Pace**, 113/907, 39 S. E. 420.

To convey land; strength of evidence required. **Lloyd**, 148/575, 97 S. E. 523. Specific performance of oral agreement to convey land, lacking in mutuality, not decreed, where no possession taken, though partial payment afterward made. **Hall**, 140/765, 79 S. E. 852.

To be void on failure of vendor's title, specific performance not decreed. **Marchman**, 145/682, 89 S. E. 780.

Corporation, when specific performance not compelled as to contract ultra vires of. **Kohlruss**, 139/625, 77 S. E. 812, 46 L. R. A. (N. S.) 72.

Damages in lieu of specific performance. **Greer**, 140/744, 79 S. E. 846.

Decree of specific performance, as against defense of material alteration of written contract. **Black**, 145/402, 89 S. E. 334.

In suit for specific performance, in other county, binds purchaser from de-

- fendant. **Whatley**, 139/148, 152, 76 S. E. 1025.
- Deed**, specific performance of parol contract for particular interpretation of, when not granted. **Harris**, 103/324, 29 S. E. 929.
- Description of land** insufficient to identify it, specific performance not decreed. **Clayton**, 138/735, 76 S. E. 63; **Tippins**, 123/415, 51 S. E. 410; **Harper**, 110/420, 35 S. E. 667; **Dwight**, 115/744, 42 S. E. 48; **Heidt**, 115/965, 42 S. E. 263. Specific performance not decreed unless land sold be clearly identified in the contract. **Estes**, 136/344, 71 S. E. 470. Sufficient, aided by parol evidence. **Clower**, 140/128, 78 S. E. 714.
- Disaffirmance**, suit for specific performance after action equivalent to. **Timmerman**, 123/854, 51 S. E. 760, 1 L. R. A. (N. S.) 379.
- Executor's sale**, specific performance enforced against one bidder. Rule of caveat emptor applied as to defects of title. **Mercer**, 129/123, 58 S. E. 1037.
- Gift, parol**, of land, specific performance of, when decreed. **Hadaway**, 119/264, 46 S. E. 96; **Walker**, 117/733, 45 S. E. 387.
- Completed by possession and valuable improvements, specific performance of. **Dunn**, 145/195, 88 S. E. 931.
- On the faith of which valuable improvements were made, specific performance of. **Garbutt**, 128/269, 57 S. E. 495, 13 L. R. A. (N. S.) 58. See **Sapp**, 128/752, 58 S. E. 447; **Causey**, 106/188, 32 S. E. 138. See **Holmes**, 106/858, 33 S. E. 216.
- Heirs of promisee**, specific performance of promise to convey land, when decreed at suit of. **Hadden**, 118/207, 44 S. E. 1001.
- Implied trusts**, specific performance of parol promise to sell land, not decreed upon doctrine of. **Lyons**, 108/574, 34 S. E. 721.
- Indefinite and uncertain reservation**, specific performance not decreed of. **Savannah Ry.**, 145/811, 89 S. E. 1082.
- Specific performance not decreed, where contract too indefinite as to location of land and kind of residence. **Young**, 139/634, 77 S. E. 807.
- Injunction** accomplishing the desired result, when may be granted; specific performance not decreed. **Edwards**, 116/201, 442 S. E. 417.
- Insurance-policy contract**, specific performance of; right of assignee. **National Life Ins. Co.**, 148/757, 98 S. E. 266.
- Lease of State railroad**, specific performance of, not enforced as to interstate-traffic rates. **State**, 138/835, 76 S. E. 577.
- Land**, specific performance of contract for sale of. **Hawkins**, 132/265, 63 S. E. 852, 131 Am. St. R. 390. Facts gave no right of action for. **Jarman**, 134/19, 67 S. E. 403; **Grant**, 134/644, 68 S. E. 422. See **Hendricks**, 134/552, 68 S. E. 298. Purchaser was not entitled to. **Hawkins**, 136/727, 71 S. E. 1112. When decreed as of course. **Funk**, 145/828, 90 S. E. 64. When not decreed as against grounds of demurrer. **Means**, 135/801, 70 S. E. 654. Where improvements are burned before vendor is in position to convey legal title and before vendee is in possession. **Phinizy**, 111/346, 36 S. E. 796, 50 L. R. A. (N. S.) 680, 78 Am. St. R. 207. Cause of action; allegations sufficient on demurrer. **Cobb**, 148/101, 95 S. E. 966; **Woodward**, 148/239, 96 S. E. 323; **Zipperer**, 148/480, 97 S. E. 74. For and against third persons. **Cowart**, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116. When not granted, unless plaintiff will perform his parol agreement with defendant, which is within the statute of frauds. **Kirkland**, 106/530, 32 S. E. 632. What tender not sufficient to obtain. **Terry**, 122/43, 49 S. E. 736. Of parol contract to convey land to children of plaintiff, reserving life-estate, in consideration of plaintiff's services. **Murphy**, 122/306, 50 S. E. 99. Admissibility of evidence. **Becker**, 138/636, 75 S. E. 1122. Contract insufficiently alleged. **Davidson**, 138/673, 75 S. E. 980. Premature action can not proceed. **Crosby**, 138/746, 76 S. E. 33.

Minor's contract for sale of land, specific performance of, when not required, in suit brought at majority. *White*, 129/508, 59 S. E. 228, 121 Am. St. R. 228.

Option on land, specific performance of. *Black*, 104/157, 30 S. E. 723. Of contract giving tenant option to buy the rented premises. *Pace*, 113/907, 39 S. E. 420. Specific performance at suit of holder of option to buy land, against obligor and obligee in bond for title. *Turman*, 145/312, 89 S. E. 214.

Parent, specific performance of parol promise of, to convey land to daughter upon her marriage, if intended husband would build house on it. *Bell*, 111/395, 36 S. E. 780.

Specific performance of voluntary agreement of, to give land to child; action supported. *Holloway*, 140/380, 78 S. E. 928.

Parol agreement to convey land, specific performance of, when decreed. *Bashinski*, 133/38, 65 S. E. 152. When not decreed. *Gillis*, 131/444, 62 S. E. 524; *Kinderland*, 131/454, 62 S. E. 582; *Waters*, 124/349, 52 S. E. 425. Facts alleged as part performance, insufficient. *Harper*, 128/444, 57 S. E. 695. Partly performed. *Delkin*, 135/517, 68 S. E. 93. Evidence failed to make a case for relief. *Grant*, 134/644, 68 S. E. 422. Rule as to proof required. *Dwight*, 115/745, 42 S. E. 48; *Warren*, 123/243, 51 S. E. 302; *Redman*, 129/435, 59 S. E. 212. Nonsuit for want of evidence. *Hayes*, 137/284, 73 S. E. 518. Petition for specific performance, good on demurrer. *Holmes*, 106/858, 33 S. E. 216. Defendant's grantor no necessary party. *Wardlaw*, 146/643, 92 S. E. 42. Specific performance, after full payment of purchase-price. *Linder*, 116/208, 42 S. E. 358. Not decreed unless land clearly identified. *Higginbotham*, 116/741, 42 S. E. 1000. Specific performance not decreed as to naked promise in parol, though the promisor encouraged the other party to expend money on the faith of it, the expenditure being for his own benefit, not that of the promi-

sor, who was not benefited. *Swan*, 123/550, 51 S. E. 622. Specific performance of parol contract for sale, or parol gift, of land; evidence did not sustain action. *Coffey*, 140/661, 79 S. E. 568. Specific performance of parol agreement to buy land and convey it to plaintiff, not enforceable. *Houston*, 146/882, 93 S. E. 635.

Parties; specific performance, suit for, by vendee, where a third person had been substituted, by agreement, for vendor, and afterwards conveyed the property to a volunteer, at vendor's instance. *Pearson*, 129/656, 59 S. E. 907. Specific performance where one whom vendee under bond for title procures to pay balance due vendor and take title as security refuses to convey to vendee after repaid by him, alleging verbal agreement that the title shall stand as security for another debt. *Pierce*, 111/725, 37 S. E. 79.

Partition of land, specific performance of parol agreement for; allegations not sufficient. *Reed*, 146/819, 92 S. E. 632.

Personal services involving skill, etc., specific performance of contract for, generally not decreed. *Greer*, 140/743, 79 S. E. 846. Nor will habeas corpus lie. *Kidd*, 136/85, 88, 70 S. E. 881.

Personalty, specific performance of contract relating to, not generally decreed. What necessary to take case out of rule. *Carolee*, 103/299, 29 S. E. 935.

Petition for specific performance, not demurrable here. *City of Quitman*, 139/238, 239, 77 S. E. 76. Sufficient on demurrer; and how amendable. *Mims*, 135/541, 69 S. E. 824. Petition for specific performance of contract for sale of lands, not subject to demurrer. *Studdard*, 139/743, 78 S. E. 116. Petition here demurrable. *Watkins*, 137/330, 73 S. E. 581.

Prayers for specific performance and general relief authorized only relief germane to the special prayer. *White*, 129/508, 59 S. E. 228, 121 Am. St. R. 228.

Purchaser who bona fide refused to accept questionable title, specific per-

formance not decreed as against. **Horowitz**, 145/866, 90 S. E. 57.

Purchase-money, right to specific performance on payment of. **Pearson**, 129/656, 59 S. E. 907.

Requirement as to entry of decree on registry of deeds; whether constructive notice is afforded by entry on minutes. **Williams**, 128/314, 57 S. E. 801.

Rescission as defense to specific performance of contract for sale of land. **Woodward**, 145/252, 88 S. E. 974.

Rules governing grant of specific performance. **Harris**, 103/325, 29 S. E. 929; **McLeod**, 126/170, 54 S. E. 949. See **Contracts**.

Statute of frauds, specific performance of contract obnoxious to, when not decreed. **Etheridge**, 106/251, 32 S. E. 122.

Street, public, specific performance of covenant to open and pave, when decreed. **L. & N. R. Co.**, 145/594, 89 S. E. 693.

Tender essential to specific performance. **Smith**, 140/719, 79 S. E. 775; **Henderson**, 107/344, 33 S. E. 433. When not necessary for vendee to allege tender of deed for execution; rule as to tender of deed, where vendor sues. **Wellmaker**, 123/204, 51 S. E. 436.

Unilateral or optional contract, specific performance of. **Perry**, 103/138, 29 S. E. 703.

Usury in deed, allegation of, was inconsistent with petition for specific performance. **Hand Trading Co.**, 139/156, 76 S. E. 1022.

Will, specific performance of contract to make, with legacy for services. **Banks**, 117/96, 43 S. E. 438. Specific performance of oral promise to devise property in consideration of services. **Rivers**, 145/103, 88 S. E. 576; **Gordon**, 145/682, 89 S. E. 749.

Oral agreement to make, in plaintiff's favor, enforced after death of promisor. Strength of evidence required. **Landrum**, 148/774, 98 S. E. 477; **Gordon**, 148/394, 96 S. E. 1006.

Written agreement as to purchase of realty, action for specific performance

of, rightly nonsuited. **Murphey**, 133/364, 65 S. E. 662.

To convey land, specific performance of, when decreed, and full relief granted. **Miller**, 139/29, 76 S. E. 585.

3. PARTIES, PRACTICE, PROCESS.

Abatement of action; rule in equity analogous to rule at law. **Ambursen Construction Co.**, 130/1, 78 S. E. 340, 47 L. R. A. (N. S.) 684.

Amendment adding new party, when not allowed. **Roberts**, 118/502, 45 S. E. 308. Of process, not allowed in. **Neal-Millard Co.**, 118/670, 45 S. E. 508.

Of supplemental petition by converting it into new suit against one who was not a party when it was filed, not allowed. **Shackelford**, 130/858, 61 S. E. 984.

Striking all as to one defendant and praying relief as to the others, no new cause. **Causey**, 106/188, 32 S. E. 138.

Attachment against non-resident not notified; no equitable relief in personam. **McReynolds**, 146/696, 92 S. E. 206.

Building and loan members all made defendants to suit to ascertain rights and liabilities, marshal and distribute assets, etc. **Boyd**, 104/793, 31 S. E. 29.

City-court actions, parties to, were interested and proper parties to equitable actions. **Stripling**, 148/514, 97 S. E. 440; **Home Mixture Guano Co.**, 148/567, 97 S. E. 637; **Kirkpatrick**, 148/708, 98 S. E. 265; **Baker**, 148/267, 96 S. E. 428; **American Nat. Bank**, 148/498, 97 S. E. 70.

Claim case, equitable amendment of joinder of issue in, allowed when. **Sattes & Wimer Co.**, 11 A. 569, 571, 75 S. E. 898.

Petition in aid of, though filed a day in advance of the claim, should not be first tried over objection that plaintiff in fi. fa. is thus deprived of opening and conclusion. Dissent in **Huntress**, 116/358, 42 S. E. 513.

Common right, establishment of, by or against several parties in one suit. **Jef-**

erson Banking Co., 146/383, 91 S. E. 463; **Horton**, 130/468, 60 S. E. 1059.
Consolidation of actions in equity. **Wilkins**, 113/60, 38 S. E. 374, 84 Am. St. R. 204; **Portwood**, 113/815, 39 S. E. 299. When no interposition for. **Cochran** 127/93, 56 S. E. 241.

Contract, effect of, on third persons, not adjudicated by decreeing its reformation as to them. **Georgia R. & Co.**, 147/349, 94 S. E. 218.

Dismissal by plaintiff, effect of, on possession and rents held by receiver. **Smith**, 101/298, 28 S. E. 665.

Of petition, no error to allow, over objection of defendant not entitled to the affirmative relief for which he prays. **Young**, 131/54, 61 S. E. 1119.

Distress warrant, defendant in, can not make another a party defendant and pray for equitable relief on his behalf. **Hawkins**, 101/145, 28 S. E. 632.

English chancery practice as to sanction and filing, never applicable in Georgia. **Young**, 135/345, 69 S. E. 593, 31 L. R. A. (N. S.) 1057, 22 Ann. Cas. 144.

Exhibits of receiver's authority to sue, action not demurrable for want of. **Greer**, 146/376, 91 S. E. 417.

When not required. Third equity rule, how affected by uniform procedure act of 1887. **Harp**, 108/179, 33 S. S. 998.

Rule as to, when not applicable in full force. **Moody**, 134/729, 730, 68 S. E. 604, 20 Ann. Cas. 301.

Filing, only bills praying extraordinary relief require sanction before. **Young**, 135/345, 69 S. E. 593, 31 L. R. A. (N. S.) 1057, 22 Ann. Cas. 144.

First term, trial at, by consent of guardian ad litem of minor defendants. **McMillan**, 109/699, 35 S. E. 102.

Foreclosure of common-law mortgage not decreed without all parties entitled to money. **Strickland**, 140/654, 79 S. E. 539.

Issues of fact submitted by special questions, as basis of decree; power and discretion; proper practice. **McWhorter**, 142/555, 83 S. E. 134.

Joinder of causes against corporation and stockholder who appropriated its assets.

Fulton Auto Co., 148/347, 96 S. E. 875; **Commercial Investment Co.**, 148/353, 96 S. E. 874.

Joint action, rule as to, differs at law and in equity. **Ivey**, 124/63, 52 S. E. 436, 110 Am. St. R. 160.

Common-law rule as to recovery by all or none of the plaintiffs does not prevail in equity. **Bigham**, 114/453, 40 S. E. 303.

For land; rule of no recovery unless all plaintiffs entitled, when not applied. **McElroy**, 142/38, 40, 82 S. E. 442.

Joint wrong-doers, petition against, to prevent illegal exercise of power of sale; parties and venue, etc. **Sellers**, 127/635, 56 S. E. 1011.

Misjoinder of causes and parties. **Garr**, 135/90, 68 S. E. 1035.

Of causes and parties, and multifariousness, petition not demurrable for. **Mass. Bonding Co.**, 137/694, 73 S. E. 1053.

Demurrer for, not good. **Justice**, 104/716, 30 S. E. 941; **Boyd**, 104/793, 31 S. E. 29.

No ground of demurrer to petition of vendee of stock shares, to prevent vendor from disposing of them, and to compel corporation to transfer them on books, etc. **Thornton**, 116/115, 42 S. E. 348.

No ground of demurrer to petition of executor for direction, though his individual transactions involved. **Gaines**, 116/489, 42 S. E. 763.

Of causes and parties; equitable suit where several attachments levied. **Southern Book Dep.**, 135/733, 70 S. E. 569.

None in suit of vendee against vendor and security-deed holder. **Loftis**, 139/347, 77 S. E. 169, 32 Ann. Cas. 1914B, 718.

Of causes; petition demurrable. **Herring**, 141/825, 82 S. E. 132.

Of causes; suit on note, and action for fraudulent conversion of collaterals. **Sharpe**, 136/483, 71 S. E. 787.

Of parties. **Webb**, 110/639, 36 S. E. 70; **Shingleur**, 110/891, 36 S. E. 222.

Of parties and causes of action did not necessarily render interlocutory

Misjoinder—(Continued).

order erroneous. **Gordon**, 138/770, 76 S. E. 40.

Of parties, and multifariousness, petition demurrable for. **Van Dyke**, 120/984, 48 S. E. 380.

Of parties, and multifariousness, petition for mandamus was not demurrable for. **Bearden**, 139/635, 77 S. E. 871.

Of parties defendant, not alleged to hold property in common or to have acquired it in the same way. **Griffin**, 116/310, 42 S. E. 482.

Of parties defendant, petition not objectionable for; to declare trust and for accounting. **Waters**, 136/182, 71 S. E. 6.

Of parties defendant, where one is not charged with wrong-doing and is without interest in result of action alleging fraud against the other. **Bagwell**, 116/464, 42 S. E. 732.

Of parties, no good objection to petition setting up misappropriation of trust funds. **Fort**, 108/588, 34 S. E. 150.

Of parties; none where plaintiffs have a common interest to central point. **East Atlanta Land Co.**, 138/380, 75 S. E. 418.

Of parties plaintiff to petition in aid of pending proceedings, some of petitioners being already parties and some not. **Hearn**, 131/374, 62 S. E. 187.

Of parties plaintiff, when no privity of contract between defendant and persons joined with plaintiff having right to enjoin threatened breach of contract. **Atlantic R. Co.**, 116/224, 42 S. E. 500.

Plaintiffs, creditors' petition not demurrable for. **Maynard**, 138/549, 75 S. E. 582.

Mortgage to secure bonds, right to foreclose, in trustee. Permanent receiver, when not appointed on petition of bondholder, trustee having refused to act. **Etna Steel Co.**, 137/232, 73 S. E. 8.

Parties and allegations necessary for relief against executor and legatees under the facts. **O'Kelly**, 141/379, 81 S. E. 197.

Additional, by amendment. **A., B. & A. Ry. Co.**, 148/282, 96 S. E. 562; **Harris**, 148/663, 670, 98 S. E. 86; **Buttrill**, 148/671, 97 S. E. 860; **Groover**, 148/794, 98 S. E. 503.

All persons directly interested should be made. **Bond**, 135/733, 736, 70 S. E. 572.

Amendment striking name of debtor, and making him a plaintiff for use, when not allowed. **Union City Co.**, 138/703, 76 S. E. 35.

By amendment in equity, allegations must be such as to warrant introduction of. **Roberts**, 118/502, 45 S. E. 308.

Brought in by amendment. **Ford**, 112/852, 38 S. E. 373. See **Berryman**, 112/752, 38 S. E. 53.

Defendant's grantor was not necessary party, in action to require conveyance of land. **Wardlaw**, 146/643, 92 S. E. 42.

Demurrer for misjoinder and non-joinder of; not sustained. **First National Bank**, 138/650, 75 S. E. 1053.

In pari delicto, rule as to, discussed. **Deen**, 128/268, 57 S. E. 427; **Sewell**, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118.

Insolvent, with antagonistic and independent claims, not joined as defendants to petition for receiver, etc. **Webb**, 110/639, 36 S. E. 70.

Interested in litigation, right of appearance by. **Tanner**, 146/338, 91 S. E. 59.

Interest and liabilities of, in same action. **Miller**, 136/435, 71 S. E. 910.

Joinder of; successive vendees in action against original vendor. **Fambrough**, 138/47, 74 S. E. 762.

Made, such as may be necessary to make assertion of right complete. **Clark**, 122/275, 50 S. E. 108.

Necessary and proper, for relief as prayed. **Miller**, 137/94, 72 S. E. 913.

Necessary; defendants to petition for cancellation of deeds and for other relief. **Fambrough**, 138/41, 74 S. E. 762.

Necessary to action. *Smith*, 147/7, 92 S. E. 519.

Necessary to action to cancel deed. *A., B. & A. Ry. Co.*, 148/282, 96 S. E. 562; *Groover*, 148/794, 98 S. E. 503.

No error in dismissing, as defendants to cross-petition under facts appearing. *Fleming*, 144/35, 85 S. E. 999.

No misjoinder of, in this suit to cancel deeds, etc. *Pierce*, 131/101, 61 S. E. 1114.

Plaintiff and defendant to equitable suit to recover land. *Frost*, 148/840, 98 S. E. 471.

Plaintiffs, when citizens and taxpayers had no standing as, for equitable relief. *Adair*, 124/288, 52 S. E. 739; *Harris*, 124/311, 52 S. E. 610, 2 L. R. A. (N. S.) 828.

Proper; and misjoinder. *Giddens*, 127/734, 56 S. E. 1014.

Properly added by amendment. *Fricker*, 124/167, 52 S. E. 65. Formal and necessary parties. *Railroad Com.*, 124/637, 53 S. E. 193.

Proper, to action to enforce payment of purchase-money debt assumed by subsequent buyers. *Williams Co.*, 139/87, 76 S. E. 675.

Proper, to suit for reformation. *Kelly*, 135/505, 69 S. E. 724.

Substantial relief not prayed against officer, in action to prevent his paying over money. *Amsler*, 146/635, 92 S. E. 55.

To action by creditor against debtor and other creditors, where some are non-residents of the county. *Bryant*, 143/217, 84 S. E. 739. See *Fourth National Bank*, 147/137, 84 S. E. 546.

To receivership proceeding; error in making them plaintiffs to pending action at law; and in granting injunction. *American National Bank*, 141/78, 80 S. E. 555.

No error in not making party on hearing of exceptions to auditor's report. *Maynard*, 147/178, 93 S. E. 289, L. R. A. 1918A, 81.

Practice, difference in, between proceeding to obtain relief against mistake and motion addressed to power of judge in

advancement of justice. *Com. Assur. Co.*, 130/212, 60 S. E. 554.

Privity of contract wanting, good ground of demurrer here. *Davis*, 110/782, 36 S. E. 223.

Process, omission of prayer for, cured by amendment. *Barnes-Fain Co.*, 148/158, 96 S. E. 179. Omission of signature from copy, when no cause to abate action. *Harris*, 148/663, 98 S. E. 86.

Relief equitable and legal, in one action, under uniform procedure act, when not extended to appointment of receiver and grant of injunction. *Virginia-Carolina Chemical Co.*, 126/50, 54 S. E. 929.

Rights and remedies, equitable and legal, enforced in same action. *Train*, 141/97, 80 S. E. 554, 49 L. R. A. (N. S.) 950; *W. & A. R. Co.*, 141/744, 82 S. E. 139. See *Mahone*, 141/214, 80 S. E. 713.

Service on minors, before act of 1876, not needed where guardian ad litem was appointed and answered. *Richards*, 106/614, 33 S. E. 193.

Several defendants; relief as to some; dismissal as to other, for want of jurisdiction. *Whito*, 139/588, 77 S. E. 789.

Surety on bond for condemnation-money becomes party; may move for discharge; judgment binds. *Miller*, 135/410, 69 S. E. 555.

Uniform procedure act of 1887, decisions as to effect of, collected. *Perkins*, 119/703, 46 S. E. 825. See *Bentley*, 119/911, 47 S. E. 209.

Effect of. It did not change law as to venue of actions. *Fourth National Bank*, 143/138, 84 S. E. 546.

Object and effect of. Creditor can not proceed coincidentally by different suits. *Cunningham*, 135/249, 253, 69 S. E. 101.

Does not prevent demurrer for multifariousness. *Van Dyke*, 120/988, 48 S. E. 380.

Wards of chancery, minors represented by guardian ad litem become, on petition passed upon in term time. *Palmer Brick Co.*, 135/450, 69 S. E. 827. Es-

tates of. **Richards**, 106/615, 33 S. E. 193.

Not on proceeding in vacation to sell legal estate. **Powell**, 143/728, 85 S. E. 891.

4. PLEADING, EVIDENCE, AND TRIAL.

Action at law or in equity; how determined. **Taylor**, 148/660, 662, 97 S. E. 858.

In equity, not at law; petition construed. **Wilson**, 134/680, 68 S. E. 514.

At law, petition construed to be, where no equitable relief prayed. **Hughes**, 135/175, 68 S. E. 1111. Actions at law not equitable causes. Contract breach; prayer for decree, etc. **Lexington Presbyterian Church**, 147/225, 93 S. E. 208. Damages, and general relief. **Frey**, 147/559, 94 S. E. 999. Discovery. **Williams**, 147/569, 94 S. E. 998. Nuisance; abatement and damages. **Fuller**, 147/334, 94 S. E. 249. Receivership. **Albright**, 147/492, 94 S. E. 561. Timber cut, recovery for. **King**, 147/464, 94 S. E. 580.

Decided on equitable principles, where converted into equitable suit by amendments to pleadings. **Real Estate &c. Co.**, 148/821, 98 S. E. 486.

To recover land, petition to collect debt by enforcing lien of security deed not treated as. **Story**, 110/66, 35 S. E. 314.

To recover land, restrain trespass, and have damages, is equitable. **Ivey**, 124/163, 52 S. E. 436, 110 Am. St. R. 160.

Under uniform procedure act, to enforce both equitable and legal rights. **Train**, 141/97, 80 S. E. 554, 49 L. R. A. (N. S.) 950. See **Mahone**, 141/214, 80 S. E. 713.

By receivers of insolvent bank, to enforce liability of stockholders, held not subject to demurrers presented. **Harris**, 148/663, 98 S. E. 86; **Buttrill**, 148/671, 97 S. E. 860; **Bartlett**, 148/854, 98 S. E. 491.

Admission in rejected amendment to answer is admissible for plaintiff who has waived discovery. **Norris**, 138/711, 76 S. E. 60.

Allegations good for relief other than prayed for, but no prayer for general relief, general demurrer sustained. **Copeland**, 116/685, 43 S. E. 59.

Amendment in lieu of supplemental bill, not allowed after termination of trial. **Real Estate Co.**, 145/105, 88 S. E. 584.

May convert action at law into equitable proceeding. **Fitzpatrick**, 133/332, 65 S. E. 859, 25 L. R. A. (N. S.) 150.

Not germane to original suit, not allowable. **Central Bank**, 147/330, 94 S. E. 308.

To suit for land by heir, attacking administrator's sale, allowable. **Oliver**, 114/592, 40 S. E. 826. To petition for injunction (counting on deed as absolute), so as to pray for judgment under deed as a security, allowable. **Sanford**, 114/1014, 41 S. E. 668.

Ancillary petition for equitable relief in aid of plaintiff in ejectment. **Vizard**, 117/67, 43 S. E. 426.

Answer and cross-bill, waiving discovery, not required verified, before act of 1895. **Ray**, 106/492, 32 S. E. 603.

To petition waiving discovery except as to particular questions, how to be treated. **Almand**, 148/369, 96 S. E. 962.

Rebuttal of, by two witnesses, or by one and corroborating circumstances; rule as to, applies only where discovery is prayed for. **Toomer**, 123/477, 51 S. E. 393.

Of trustee, for bondholders furnished no reason for upholding demurrable petition. **Atlanta R. Co.**, 140/650, 79 S. E. 555.

Not required before service of copy of petition and process. **Brown**, 137/596, 73 S. E. 974.

May set up right to affirmative relief, damages from trespass on land involved, and, by amendment, damages from trespasses after answer filed. **Becker**, 133/865, 67 S. E. 92.

Auditor's report, no jury trial of exceptions of fact to, unless approved by judge. **Lamar**, 108/158, 33 S. E. 958; **Byrom**, 102/566, 31 S. E. 560; **Fitzpatrick**, 133/332, 65 S. E. 859, 25 L. R. A. (N. S.) 150; **Mitchem**, 139/519, 77 S. E. 627; **Peyton**, 145/180, 88 S. E. 937; **Durham**, 145/189, 88 S. E. 932; **Mayor &c.**, 145/299, 89 S. E. 210; **Cranston**, 112/617, 37 S. E. 875; **Phillips**, 112/628, 37 S. E. 887; **Hogan**, 122/283, 50 S. E. 84; **Austin**, 122/440, 50 S. E. 382. **Aliter** in action at law. **Tippin**, 122/120, 50 S. E. 35. **Refusal to approve**, not reversed. **lb.**; **Harrell**, 112/712, 38 S. E. 56. **Compare Darien Bank**, 112/951, 38 S. E. 363.

Approval may be refused if evidence relied on be not stated or pointed out by appropriate reference. **Perkins**, 122/294, 50 S. E. 107; **Armstrong**, 122/870, 50 S. E. 997.

Jury trial not required on exception of fact to, in equity cause. **Stone**, 111/809, 35 S. E. 648.

Jury trial on exceptions of fact to, in equity cause, right to, not constitutional but statutory. **Bemis**, 105/293, 31 S. E. 173; **Hearn**, 103/276, 29 S. E. 973.

Exceptions to, overruled, not proper to direct verdict. **Brown**, 106/516, 32 S. E. 601. **As to decree**. **Davidson**, 106/799, 32 S. E. 867.

General exceptions to, when not sustainable. **Fricker**, 124/165, 52 S. E. 65. **Decree on report**, what proper, to give correct balance. **lb.** **Amendment** adjusting prayer for relief to finding of, allowed. **Sterling Co.**, 124/371, 52 S. E. 541.

In equitable action, exceptions to, need not be referred to jury. **Houston**, 124/104, 52 S. E. 83.

In equity cause, discretion of court as to overruling exceptions to fact to, where evidence conflicting. **Hearn**, 103/271, 29 S. E. 973.

In equity case, exceptions of fact to, may be disapproved, and decree entered, without submitting to jury.

North Atlanta and Co., 138/135, 74 S. E. 1000.

No error in overruling exceptions to. **Georgia Railroad Bank**, 147/668, 95 S. E. 234.

Objection to, as not filed in time limited, how and when to be made. **Donalson**, 127/682, 56 S. E. 1023.

Exceptions of fact disapproved, and exceptions of law overruled, no error. **Lamar**, 108/158, 33 S. E. 958; **Torras**, 108/345, 33 S. E. 989.

Bill of review, when not lie to set aside decree. **Booth**, 125/472, 54 S. E. 147.

When lies. **Herz**, 104/642, 30 S. E. 797.

Petition not in nature of, but of motion to set aside a judgment. **Apperson**, 148/159, 96 S. E. 260.

Use of, much narrowed in this State. **Burke**, 141/72, 80 S. E. 311.

Not lie to review judgment overruling motion for new trial. **Donaldson**, 109/833, 35 S. E. 277.

Nature of, discussed; not lie to open and reform judgment here. **Durant**, 107/465, 33 S. E. 478.

No leave to file, on dismissal or withdrawal of writ of error. **Burke**, 141/72, 80 S. E. 311.

Generally not lie against consent decree. **Latimer**, 119/887, 47 S. E. 322.

Cause of action, whether legal or equitable, depends on relief prayed. **Prayer** for accounting, dissolution of partnership, and injunction makes case in. **Fowler**, 120/443, 47 S. E. 951.

Claim, petition in aid of, converts statutory proceeding into equity case; but when does not authorize decree for larger sum than due on the execution. **Austin**, 122/440, 50 S. E. 382.

Construction or reformation of contract for sale of land, not granted, for want of certain description of boundaries. **Satterfield**, 122/84, 37 S. E. 211.

Contract breach, demurrable allegations and prayers in action on. **Cochran**, 147/401, 94 S. E. 303.

Corporation organizers, creditors' petition against, when not demurrable. **John V. Farwell Co.**, 137/174, 73 S. E. 13.

Cross-bill was on footing of separate suit, as to land involved. *Harris*, 142/67, 82 S. E. 447. Dismissal thereof did not prevent restoration of status as to possession. *Luxury Fruit Co.*, 142/866, 83 S. E. 1003.

Stricken that seeks to introduce distinct matter not embraced in original petition. *Peterson*, 137/179, 73 S. E. 15.

Matters not germane to petition. *Atlanta Northern Ry. Co.*, 147/214, 93 S. E. 210.

Matters appropriate to, may be set up by answer, and plaintiff is bound to take notice of them. *Latimer*, 119/887, 895, 47 S. E. 322. Allegations in answer not served can not be treated as admitted because not answered. *Brown*, 137/597, 73 S. E. 947.

Matter in, not germane, invoking statutory proceeding to dissolve corporation. *Bank of Soperton*, 142/796, 83 S. E. 782. See *Bank of Soperton*, 142/34, 82 S. E. 464.

Lies, though defendant originally had no standing in court of equity. *Reaves*, 120/727, 48 S. E. 199. Reply to, may be required; but if defendant does not move therefor, he can not, after submission to jury, take advantage of failure to reply. *Beard*, 120/1018, 48 S. E. 400.

Germane, praying for judgment on notes, petition seeking to enjoin exercise of power of sale of land. *Ray*, 106/492, 32 S. E. 603.

Chancery practice as to, modified by statutes. *Lacher*, 139/802, 78 S. E. 188.

Set-off, and recoupment, doctrine of, discussed. *Hecht*, 114/922, 41 S. E. 74.

Setting up matter unrelated as set-off, not retained after dismissal of petition. *McGhee*, 144/690, 87 S. E. 917.

Germane to action to prevent voting of stock; prayer for judgment with absence of prayer for affirmative relief. E. 209.

Declaratory action, praying for no decree save decision of legal rights of the par-

ties, not maintainable. *Southern R. Co.*, 116/276, 42 S. E. 508.

Deed, petition to construe, not maintained. *Howell*, 137/710, 74 S. E. 255.

Defense equitable, no "equity case," in absence of prayer for affirmative relief; jurisdiction of writ of error in Court of Appeals. *Arnold*, 22 A. 504, 96 S. E. 343.

Demurrer or motion to dismiss, overruling of, not an adjudication that plaintiff is entitled to every relief prayed, but that petition is not without equity. *Gibson*, 130/247, 60 S. E. 565. Not sustainable as such on interlocutory hearing or in vacation. *Gordon*, 138/770, 76 S. E. 40; *Bishop*, 138/771, 76 S. E. 89.

Answer not looked to in passing on. *Griffin*, 101/721, 29 S. E. 29.

As such not sustainable in vacation before appearance term; but may be considered as cause against grant of interlocutory relief. *Johnson*, 120/1047, 48 S. E. 424.

By some of defendants decided at appearance term, before other defendants served. *Boswell*, 147/734, 95 S. E. 247.

By some defendants to substance of whole petition inures to benefit of all defendants. *Tillman*, 147/206, 93 S. E. 201.

For want of equity not good; petition seeking to set aside assignment of property as fraudulent. *McKenzie*, 118/728, 45 S. E. 610.

For want of, overruled, where injunction dissolved and receiver discharged upon defendant's execution of bond. *Booth*, 122/333, 50 S. E. 173.

For want of equity properly overruled. *Peeples*, 108/531, 34 S. E. 5. Properly sustained. *King*, 103/248, 30 S. E. 801.

Speaking demurrer overruled. *Beckner*, 104/222, 30 S. E. 622.

Direction as to tax returns, etc., petition for, under act of 1903, not demurrable. *County of Walton*, 120/549, 48 S. E. 243.

Dismissal of petition did not carry answer in nature of cross-bill, praying purely

legal relief. **Ray**, 106/492, 32 S. E. 603; **Lacher**, 139/802, 78 S. E. 188.

On demurrer proper here. **Smith**, 138/807, 76 S. E. 360.

Distraint, equitable relief prayed by way of defense to, was not authorized **Hawkins**, 101/145, 28 S. E. 632.

Duplicity in pleading, as ground of demurrer. **Chamblee**, 131/554, 563, 62 S. E. 1032.

Executor mismanaging and threatening to misappropriate, petition against, when insufficient. **Gould**, 120/51, 47 S. E. 505

Not generally required to give bond, or enjoined, if no unequivocal allegation of his insolvency. **Gould**, 120/51, 47 S. E. 505.

Petition by, for direction, though involving his individual transactions, when sustainable against demurrer by heirs. **Gaines**, 116/476, 42 S. E. 763.

Facts, special findings on, strongly supported, new trial not granted for inaccurate charge of court. **Booth**, 122/333, 50 S. E. 173.

Fund in administrator's hands equitably belonged to plaintiff, under allegations considered on demurrer. **Hargrove**, 139/308, 77 S. E. 72.

General relief, scope of prayer for. **White**, 129/508, 59 S. E. 228, 121 Am. St. R. 228; **Sapp**, 128/753, 58 S. E. 447; **Steed**, 115/101, 41 S. E. 272; **Hairalson**, 111/59, 36 S. E. 319; **Schmitt**, 109/632, 35 S. E. 145.

Prayer for, will not embrace action distinct from main relief sought. **Story**, 110/66, 35 S. E. 314.

Guardian's contract, petition to subject ward's estate on, when demurrable. **Burke**, 124/248, 52 S. E. 653.

Homestead attacked by equitable petition as invalid, and enforcement of debt against the property attempted thereby, petition upheld against demurrer. **Evans**, 117/940, 44 S. E. 2.

Interlocutory hearing, judgment on, leaves controlling issue of fact for jury trial. **Collins**, 116/40, 42 S. E. 373.

Demurrer not sustained on, but considered as cause against grant of in-

junction. **Reynolds Co.**, 118/254, 45 S. E. 235.

Jury trial, right to, in equity causes. **Rodgers**, 105/69, 31 S. E. 126.

No constitutional right to, in equity. **Lamar**, 168/158, 33 S. E. 958.

In equity cases, legislature may deny. **DeLamar**, 128/66, 57 S. E. 85.

Legal cause of action substantially set forth in petition for equitable relief, petition maintainable as action at law. **S. C. & Ga. R. Co.**, 111/420, 36 S. E. 593. See **Lavette**, 111/821, 35 S. E. 637.

Lien on land, petition to establish, for amount paid on purchase-price, was demurrable. **Williams**, 141/114, 80 S. E. 625.

Motion in arrest of judgment, rule as to, extends to final decree in equity. **Perkins**, 119/703, 46 S. E. 825.

Multifarious petition. **Shingleur**, 110/891, 36 S. E. 222.

Action by trustee against subscribers to corporate stock was not. **Chappell**, 145/717, 89 S. E. 777.

Action for accounting for divers sums remitted on independent transactions is not. **Brock**, 132/19, 63 S. E. 794.

Action not so held against corporation, directors, and liquidating agents. **American National Bank**, 145/618, 89 S. E. 691.

Action seeking to join distinct claims without common nexus. **Field**, 144/56, 86 S. E. 245.

Action was not; by several customers of warehouse for accounting after fire loss. **Farmers &c. Co.**, 140/669, 79 S. E. 474.

Allegations and prayer for specific relief causing petition to be. **Richter**, 144/650, 87 S. E. 895.

Creditors' petition against various shareholders of bankrupt corporation was not. **Carlisle**, 143/799, 85 S. E. 1010, Ann. Cas. 1917A, 973.

For misjoinder of causes and parties, petition was not. **Mass. Bonding Co.**, 139/189, 77 S. E. 86; **Bearden**, 139/635, 77 S. E. 871.

Multifarious—(Continued).

Common interest and connection that avoids objection to petition as. **Taylor**, 138/41, 74 S. E. 694.

Petition not subject to demurrer as; account and settlement of estate, etc. **Miller**, 136/428, 71 S. E. 910.

What sufficient to sustain bill objected to as. **Boyd**, 104/793, 31 S. E. 29.

Petition against debtor and his transferees was not. **Peeples**, 108/527, 34 S. E. 5.

Petition against several persons, concerning things of different natures. **Richter**, 147/600, 95 S. E. 10.

Petition not demurrable. **Bridges**, 148/99, 95 S. E. 964; **National Life Insurance Co.**, 148/757, 98 S. E. 266; **Ansley**, 140/615, 79 S. E. 454. Compare **Spratling**, 140/625, 79 S. E. 536.

Distinct claims against different persons, with no common right. **George W. Muller Co.**, 147/106, 92 S. E. 884.

In allegations and prayers. **Pittman**, 102/11, 29 S. E. 131.

Petition is not, which seeks to enforce rights of transferee of secured debt against persons asserting title to land that was conveyed as security. **Clark**, 122/275, 50 S. E. 108.

Petition is not, with alternative prayer for specific performance or damages in lieu of it. **Boney**, 147/30, 92 S. E. 636.

Petition not so held. Rule as to common purpose and right. **Brown**, 147/546, 94 S. E. 993; **Brumby**, 147/592, 95 S. E. 7.

Petition not so held, seeking for specific performance and determination of other question. **Funk**, 145/828, 90 S. E. 64.

Petition not held to be, praying to cancel deed and for injunction. **Pierce**, 131/101, 61 S. E. 1114. Or presenting case in dual aspect leading to same remedy, or with alternative prayer. **Chamblee**, 131/554, 62 S. E. 1032.

Petition of administrator, for receiver and accounting against two persons holding property of the estate. **Griffin**, 116/310, 42 S. E. 482.

Petition of trustee in bankruptcy of insolvent corporation, against stockholders, was not. **Allen**, 122/556, 50 S. E. 494.

Petition to cancel deed of wife to husband for several reasons, not so held. **Echols**, 140/679, 79 S. E. 557.

Petition to declare trust and for accounting was not. **Waters**, 136/182, 71 S. E. 6.

Petition to require each of two defendants to interplead and so determine which of them is liable to the plaintiff. **Price**, 136/175, 71 S. E. 4.

Petition to wind up building and loan association, marshal assets, etc., was not. **Boyd**, 104/793, 31 S. E. 29.

Petition was not multifarious. **Greer**, 133/193, 65 S. E. 416.

Stockholder's petition for himself and others was not. **Atlanta Steel Co.**, 138/688, 669, 75 S. E. 980.

Suit for land, against separate defendants with distinct interests. **Knott**, 140/337, 78 S. E. 1062.

Interlocutory relief, multifariousness of petition, as ground for denying; test of. **White**, 128/539, 58 S. E. 33.

New trial, equitable petition for, dismissed on demurrer because it showed petitioner had been negligent. **Berry**, 111/117, 36 S. E. 459.

Perfect equity in land, as defense to ejectment. **Grace**, 129/638, 59 S. E. 811.

Petition demurrable as multifarious, for misjoinder, etc. **Hawkins**, 108/784, 33 S. E. 682.

Premature, and demurrable, to impound money recovered by insolvent next friend, and prospective heir, of insane doweress. **Crenshaw**, 127/742, 57 S. E. 57.

Not authorizing equitable relief prayed for, but substantially setting forth legal cause of action, good against general demurrer. **S. C. & Ga. R. Co.**, 111/420, 36 S. E. 593.

Inaccurately styled "equitable petition," and containing useless prayer for general relief, not dismissed on demurrer, when allegations authorize

special relief sought. *Orr*, 117/207, 43 S. E. 207.

For equitable relief, not subject to objections raised by demurrer here. *Ford*, 132/344, 63 S. E. 1120.

Demurrable on several grounds stated. *Howell*, 102/174, 29 S. E. 178.

Demurrable for want of equity: to enjoin defendant from selling; and that land be sold to satisfy an execution. *Fretwell*, 114/303, 40 S. E. 298. not so; to annul decree for fraud, set aside sale, etc. *Bigham*, 114/453, 40 S. E. 303.

Pleading, particularity of, required of intervenor. *Jones*, 134/553, 68 S. E. 303.

Forms and niceties of, departed from. *McGregor*, 124/562, 53 S. E. 93.

Equitable, in claim case. *Taylor*, 2 A. 453, 455, 58 S. E. 683.

In aid of claim, when not properly stricken. *Protestant Episcopal Church*, 131/666, 63 S. E. 136, 127 Am. St. R. 243.

Ground of relief not pleaded, no basis for decree. *Gaskins*, 131/459, 62 S. E. 581.

Defective, in action for decree of title. *Pickron*, 147/658, 95 S. E. 238.

Allegations too general for relief. *Gould*, 120/51, 47 S. E. 505.

Prayer too comprehensive, no ground to dismiss. *Ford*, 112/853, 854, 38 S. E. 373.

Inconsistent, proper practice to strike; no ground to dismiss petition which contains other prayer for appropriate relief. *Pierce*, 131/99, 61 S. E. 1114.

For relief not warranted by allegations, and no prayer for general relief, general demurrer sustained. *Copeland*, 116/685, 43 S. E. 59. Prayers determine whether cause of action is legal or equitable. *Steed*, 115/97, 41 S. E. 272.

For receiver and judgment for retention of money, etc., not subject to criticism that no final judgment or relief is prayed for. *Booth*, 131/751, 63 S. E. 502.

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For general relief, with prayer for special relief, authorized only such relief as germane to the special prayer. *White*, 129/508, 59 S. E. 228, 121 Am. St. R. 228.

For general relief, recovery of damages held not germane to. *Two JJ. dissent. Rosenkrantz*, 147/730, 95 S. E. 225.

For damages omitted, petition showing purpose to recover them, and to restrain trespass, defect amendable and cured by verdict. *Fitzpatrick*, 131/693, 63 S. E. 213.

Premature action, no relief in, where cause accrues pending the suit. *Crosby*, 138/746, 76 S. E. 38.

Proceeding in equity made by allegations and prayers for relief. *Fitzpatrick*, 133/332, 65 S. E. 859, 25 L. R. A. (N. S.) 150.

Production of papers, code provisions as to, applicable to all cases. *Ga. Iron Co.*, 104/395, 30 S. E. 878.

Rehearing after final decree, authorized, under uniform procedure act of 1887. *Perkins*, 119/702, 46 S. E. 825.

Relief not granted without appropriate prayer; extent of prayer for general relief. *Pound*, 146/435, 91 S. E. 405.

Specific, measured by extent of prayer. *Wimpee*, 148/419, 96 S. E. 993.

Prayed in equity being ancillary, main purpose being to recover land, legal rules applied. *Moss*, 126/201, 54 S. E. 968.

Prayed for by answer, no reversal for refusing, on facts appearing. *Echols*, 140/679, 79 S. E. 557.

Prayed against agent was collateral to and dependent on that sought of his principal. *Martin*, 134/34, 67 S. E. 536.

General, scope of. *Wimpee*, 148/419, 96 S. E. 993.

Right to specific relief not challenged by demurrer or otherwise, prayer therefor granted as of course. *Aaron*, 114/587, 40 S. E. 713.

Sworn off, equity was, by answer; grant of extraordinary relief error. *Bigbee*, 105/841, 32 S. E. 139.

Title, allegations as to, would support decree for some relief; error in dismissing petition on demurrer. *Wade*, 139/62, 76 S. E. 563.

Trader's bill, intervention not treated as, contesting with mortgage for fund arising from income of railroad property. *Ga. So. R. Co.*, 101/466, 28 S. E. 842. Allegations and proof not up to requirements of trader's act, no receiver appointed. *Reynolds*, 118/254, 45 S. E. 235.

Trial at first term, in proceeding against minors, had by consent of guardian ad litem. *McMillan*, 109/699, 35 S. E. 102.

At first term in equity cause, by consent of parties; effect of such consent. *Latimer*, 119/887, 47 S. E. 322.

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Of petition not required, where no extraordinary relief prayed. *Owens*, 148/676, 97 S. E. 856.

5. VERDICTS AND DECREES.

Accident and mistake, judgment not set aside in equity for, on evidence here adduced. *Clark*, 143/729, 85 S. E. 869.

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Administrator, decree authorized suit against, for money directed to be paid by him into court, though plaintiff had judgment against him. *White*, 114/415, 40 S. E. 257.

Admissibility of decree without the whole record. *Kerchner*, 106/437, 32 S. E. 351.

Agreement for case to be governed by decree in other case refers to final decree; not one subject to be set aside. *Peoples Bank*, 116/279, 42 S. E. 490.

Attorney, judgment against plaintiff on unauthorized and unratified appearance by, when set aside. *Anderson*, 147/455, 94 S. E. 574, L. R. A. 1918B, 894.

Auditor's report, decree on, as res judicata. *Fowler*, 1 A. 549, 57 S. E. 939.

Decree not entered while exceptions are pending and undisposed of. *St. Amand*, 131/469, 62 S. E. 509.

Decree may be entered pending motion for new trial, after verdict on exceptions. *Adair*, 136/3, 70 S. E. 578.

Chambers, decree at, or in open court, issue as to, open for determination by evidence. *Morehead*, 127/510, 56 S. E. 745.

Children, decree in favor of, not binding on prior purchase from their mother whose equity was superior. *Richards*, 106/616, 33 S. E. 193.

Collateral attack on judgment not allowed by way of equitable plea. *Evans*, 140/538, 79 S. E. 116.

Decree of court of equity not subject to, in another court, when. *Graves*, 15 A. 718, 84 S. E. 187.

Collusive judgment foreclosing lien, another lienholder may attack, before sale thereunder. *Dixon*, 103/710, 30 S. E. 690.

Color of title, decree admissible as. *Wardlaw*, 106/29, 31 S. E. 785.

Common-law judgment, so-called "decree" was. *King*, 22 A. 198, 95 S. E. 766.

Conclusiveness of decree. *Claffin Co.*, 106/282, 32 S. E. 108.

Confirmation of sale under decree is within court's discretion; and when no error in refusing. *Hall*, 133/606, 66 S. E. 478.

Consent decree, if not valid as judgment, may bind as agreement. *Driver*, 114/296, 40 S. E. 257. Decree by consent of attorneys, against client's instructions, when set aside. *Davis*, 139/702, 78 S. E. 190, 46 L. R. A. (N. S.) 750. Decree on consent verdict not set aside on grounds presented, after ten years. *Spruell*, 137/721, 725, 74 S. E. 264.

Decree is not, because of consent for court to vacate and re-sign it as of later date. *Potts*, 131/198, 62 S. E. 77.

Payment or tender under, what necessary; time being of the essence. *Roland*, 139/825, 78 S. E. 249.

Gave executor no right to charge commissions on moneys handled in conducting mercantile business. *Lamar*, 118/684, 45 S. E. 498.

Costs and fees, decree as to, how and when supplemented by judgment as to expenses of receivership. *Pine Mountain Mica Co.*, 134/5, 6, 67 S. E. 428.

Contempt in violating decree. *Taliaferro*, 136/417, 73 S. E. 675.

In violating former decree, prayer to punish for, stricken as not germane to present suit. *White*, 136/21, 70 S. E. 639.

Demurrable petition to vacate decree. *Prater*, 148/345, 96 S. E. 861.

Direction, petition for, when maintainable by representative of estate; and when by legatee. *Morrison*, 147/465, 94 S. E. 569.

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Of verdict, and ordering sale of land by receiver. not erroneous under the facts. *Watson*, 132/154, 63 S. E. 912.

To amend decree. *Hardin*, 102/180, 29 S. E. 174.

As to decree against plaintiff and his trustee in bankruptcy. *Scott*, 141/74, 80 S. E. 316.

Of review court, as to decree not authorized by pleadings, and without proper parties. *Green*, 101/258, 28 S. E. 692.

Dormant judgment, equitable proceeding to subject property to. *Palmer*, 126/521, 55 S. E. 229.

Entering decree on verdict, need of, for res judicata. Facts making an exception to the general rule. *Winn*, 147/427, 94 S. E. 468.

Erroneous decree in specified particulars. *Scott*, 141/73, 80 S. E. 316.

Estate, decree dividing, construed as voluntary conveyance by heir to his

wife and child; not as judgment inter partes, settling rights. *Dix*, 124/1067, 53 S. E. 571.

Exceptions to report, decree on, in accordance with Supreme Court decision, left no issue for trial. *Brown*, 135/581, 69 S. E. 1081.

Final decree, case pending on exceptions to auditor's report was not ripe for. *Mass. Bonding Co.*, 139/180, 182, 77 S. E. 86.

As to determination of issues of law and fact, not made interlocutory by reserving right to direct mode of its execution. *Moody*, 134/721, 68 S. E. 604, 20 Ann. Cas. 301.

Not to be rendered on interlocutory hearing. *Peek*, 135/430, 69 S. E. 574. Judgments final and interlocutory, defined. *Booth*, 131/756, 63 S. E. 502.

Fraud as ground for setting aside judgment. *Southern Ry. Co.*, 103/541, 29 S. E. 761.

Judgment may be set aside for, where taken in violation of agreement of attorneys with defendant. *Beverly*, 142/834, 83 S. E. 942.

Judgment not set aside for, on petition of party to illegal scheme to defraud his partner. *Bank of Doerun*, 148/799, 98 S. E. 467.

Judgment obtained by, in court of ordinary, jurisdiction to set aside. *Lester*, 144/143, 86 S. E. 321.

Judgment set aside for. *Jones*, 120/642, 646, 48 S. E. 134; *Anderson*, 147/455, 94 S. E. 574, L. R. A. 1918B, 894; *Albright*, 147/492, 94 S. E. 561. For fraud of widow in violating her agreement with heirs. *Ellis*, 147/609, 95 S. E. 4. Judgment may be set aside by direct proceeding in equity for fraudulent representation to court. *Wallace*, 142/408, 83 S. E. 113.

General practice as to entry of decree. Single decree desirable; not always required. *Moody*, 134/730, 68 S. E. 604, 20 Ann. Cas. 301.

Guardian, decree on appeal from decision of ordinary on application of, for discharge, held erroneous. *Maloy*, 134/432, 68 S. E. 80.

Illness of counsel who tried but failed to notify court, judgment not set aside in equity for. *Sims*, 135/439, 69 S. E. 545.

What must appear to set aside judgment on account of party's absence by reason of. *McCall*, 120/262, 47 S. E. 920.

Inconsistent orders; directing sale by receiver and refusing to restrain sale under mortgage fi. fa. *Bryant*, 143/217, 84 S. E. 739.

In rem judgment not obtainable in equity by creditor without lien, on debt as against which all homestead and exemption rights waived, over plea of discharge in bankruptcy. *Bowen*, 130/31, 60 S. E. 174, 124 Am. St. R. 164.

Irregularities or defects in proceeding, decree not void for. *Richards*, 106/616, 33 S. E. 193.

Jail, judgment obtained while defendant was in, when not set aside on petition after lapse of a year. *Peterson*, 144/316, 86 S. E. 1099.

Justice's court, judgment of, set aside in equity for invalidity. *McClatchey*, 144/292, 86 S. E. 1085.

Larger sum than that authorized by pleadings, decree for, erroneous. *Austin*, 122/440, 50 S. E. 382.

Master's report, decree on, did not authorize issuance of execution. *Coogle*, 141/199, 80 S. E. 481.

Minor, decree against; service on guardian and on guardian ad litem, when not void. *Taliaferro*, 137/417, 73 S. E. 675.

Mold judgment and decree, power to, so as to afford complete relief to all parties. *Miller*, 132/410, 69 S. E. 555. Decree molded so as to meet exigencies of case. *Baxter*, 126/373, 54 S. E. 1036.

New trial, decree set aside entirely on grant of. *Morehead*, 127/510, 56 S. E. 745.

Error in decree, for direct exception, not motion for new trial. *Booth*, 122/333, 50 S. E. 173; *Herz*, 101/615, 29 S. E. 33; *Collins*, 118/205, 44 S. E. 1000.

Notice of rendering decree, court not required to give. *Prater*, 148/346, 96 S. E. 861.

Nullity, decree not treated as, at instance of purchaser at receiver's sale. *Southern Cotton Mills*, 126/789, 72 S. E. 158. Judgment attacked as null and void, demurrer on ground that petition is barred (as proceeding to set aside judgment), not sustainable. *Buchan*, 131/501, 62 S. E. 815.

Order for sale of property on application of trustee, construed. *Richards*, 106/615, 33 S. E. 193.

Void, of judge in vacation, not confirmed, unless rights of no party injured. *Powell*, 143/728, 85 S. E. 891.

For sale of land, and adjudication of rights, without passing on demurrers, and before final trial, error. *Brooke*, 143/684, 85 S. E. 879.

Administrative or interlocutory, distinguished from final decree. *Booth*, 131/756, 63 S. E. 502.

In term or vacation, for sale of trust property. *Richards*, 106/615, 33 S. E. 193, 45 L. R. A. 712.

By judge without jury, on ex parte application, at term when presented. *Id.*

Parties and privies only bound by decree. *Wardlaw*, 106/33, 31 S. E. 785.

Partitioners, decree fixing rights and liabilities of, concluded matter not expressly covered by pleading. *Goolsby*, 146/763, 92 S. E. 521.

Pleadings, decree unauthorized by, suit being to recover land, and case referred to auditor; amendment directed. *Milner*, 104/101, 30 S. E. 648.

Decree authorized by verdict construed in light of. *Landrum*, 148/774, 98 S. E. 477.

Decree authorized by, and followed verdict. *Bigham*, 114/454, 40 S. E. 303.

Decree not authorized by, error. *Evans*, 143/61, 84 S. E. 128.

Prior liens, decree declaring, was not affected by ex parte order to present claims to receivers. *Perkins*, 147/527, 94 S. E. 1003.

Reform decree, petition to, concluded by judgment of affirmance on exceptions taken too late. *Herz*, 104/638, 30 S. E. 797. Error in reforming and remolding decree under defense to application for writ of possession. *Hill*, 146/168, 91 S. E. 40.

Relief against judgment or order without jurisdiction, without proceeding to set aside. *Empire Ins. Co.*, 140/142, 78 S. E. 935.

None against judgment for causes that could, by diligence, have been pleaded and proved. *Redwine*, 101/701, 29 S. E. 428; *Reynolds Co.*, 116/495, 42 S. E. 796.

None against judgment after three years, complainants having been negligent. *Field*, 124/685, 52 S. E. 885.

Reopened by court of equity, judgment not, where parties had their day in court, etc. *Cohen*, 137/551, 73 S. E. 749.

Res adjudicata, a good defense to matter that could have been set up in former action. *Perrin*, 142/394, 395, 83 S. E. 102.

Restitution by receiver to sheriff, order for, after entry of remittitur, carrying reversal of judgment appointing receiver. *Savannah Shoe Co.*, 108/767, 33 S. E. 404.

Right of either party to have decree entered, under adjudication here. *Guernsey*, 113/898, 39 S. E. 402, 84 Am. St. R. 270.

Sale, decree before, fixing rights and priorities of creditors, not error. *Ferris*, 110/103, 35 S. E. 347.

Set aside in equity, judgment not, for error curable by statutory remedy. Nor because party and counsel were misled by statement of justice, neither fraud nor meritorious defense being set up. *Johnson*, 108/595, 34 S. E. 158.

Equitable proceeding to, supported by facts against general demurrer. *Philip Carey Co.*, 144/470, 87 S. E. 396.

Judgment not, which could have been prevented but for negligence of movant. *Beeland*, 145/842, 90 S. E. 46.

Judgment of conviction not, other appropriate remedy being available. *Southern Express Co.*, 141/421, 81 S. E. 114.

Petition to, did not lie for matters on its face, open to motion at law. *Apperson*, 148/159, 96 S. E. 260.

Petition to, was demurrable. *Shipp*, 147/711, 95 S. E. 251. Not subject to demurrer. *Clark*, 138/726, 75 S. E. 1128; *Jones*, 138/863, 76 S. E. 378.

For assurances given by plaintiff to defendant. *Hall*, 127/538, 56 S. E. 759.

On matters apart from record, involving fraud. *Worthy*, 144/513, 87 S. E. 667.

On motion without resort to equity. *Longman*, 108/573, 33 S. E. 916.

Allegations in petition too vague and contradictory. *Benedict*, 122/412, 50 S. E. 162. Proper proceedings for setting aside. *Union Com. Co.*, 122/640, 50 S. E. 483.

When decree not, after three years. *Walker*, 114/862, 40 S. E. 1010.

Decree not, without proper parties. *Miller*, 137/90, 72 S. E. 913. Setting aside of judgment, when proper remedy. *Miller*, 135/411, 69 S. E. 555.

Decree may be, on motion during term at which rendered. *Perkins*, 119/702, 46 S. E. 825.

Statute of frauds, decree could not be framed in disregard of, irrespective of plaintiff's election. *Kirkland*, 106/537, 32 S. E. 632.

Surety setting up previous ignorance of usury in note, judgment not set aside at instance of. *Berryman*, 145/136, 88 S. E. 682.

Terms imposed as condition to grant of relief sought. *Kirkland*, 106/535, 32 S. E. 632.

Time additional for compliance with decree, error in allowing, on facts. *Hill*, 146/168, 91 S. E. 40.

Trust, decree for execution of, what proper. *Prince*, 120/811, 48 S. E. 412.

Trustee, decree bound, where warranted by pleadings. *Payne*, 110/549, 36 S. E. 89.

Verdict for damages, under prayer for general relief. *Wilson*, 146/369, 91 S. E. 113.

In complicated case to be put in form by judge under agreement; when party estopped. *Collins*, 118/205, 44 S. E. 1000.

Special, in response to particular questions covering issues. *Robertson*, 148/81, 95 S. E. 973.

Special, on issues of fact; power of judge to require, without request; when compulsory. *Hardin*, 102/180, 29 S. E. 174.

Special, on questions submitted, how waived. Discretion as to limiting instructions to jury. *Livingston*, 132/1, 63 S. E. 694.

Should be general, where no equity in the case; not a special finding of facts. *Central Railway Co.*, 133/393, 65 S. E. 855.

Special, on questions submitted, did not warrant decree for relief prayed. *Carter*, 104/569, 31 S. E. 407.

Sufficient as basis of decree. *Collins*, 118/205, 44 S. E. 1000.

Decree without, not invalid, where no defense and no question of fact. *Lindsey*, 140/249, 250, 78 S. E. 848.

Correct, decree substantially following, no material variance. *Atkins*, 122/644, 50 S. E. 487.

Decree not following, where no meritorious exception. *Bank*, 120/944, 48 S. E. 393.

General, for plaintiff, decree on, where equitable relief prayed should conform to pleadings and equitable principles applicable. *Achey*, 105/514, 31 S. E. 190.

Vested-remainder interests of parties acquired under decree. *Caruth*, 135/802, 803, 70 S. E. 321.

Void judgment for want of description of land, aid of equity not needed to set aside. *White Sewing Machine Co.*, 137/38, 72 S. E. 416.

Year's support judgment defeated by decree on petition to marshal assets. *Mulherin*, 120/1080, 48 S. E. 437.

Decree on title as to realty set apart as, not warranted before trial of the issue. *Smith*, 101/296, 28 S. E. 665.

EQUITY OF REDEMPTION. See *Deeds*; *Dower*; *Mortgages*.

ERROR. See *Amendments*; *Appeals*; *Certiorari*; *Charge to Jury*; *Criminal Law*; *Estoppel*; *Evidence*; *Garnishments*; *Jurisdiction*; *Justices' Courts*; *New Trials*; *Nonsuit*; *Parties*; *Pleading*; *Practice in Courts of Review*; *Presumptions*; *Process*; *Statutes*; *Telegraphs and Telephones*; *Verdicts*. Clerical error, not requiring dismissal of bill of exceptions: "due" treated as intended for "true." *Kerr*, 13 A. 9, 78 S. E. 682. "Not" treated as clerical error here.. *Brooks*, 13 A. 269, 79 S. E. 160.

ESCAPE. See *Criminal Law*; *Evidence*.

ESCHEATS. See *Estates*.

Equitable suit of county school commissioner, did not lie. *Duggan*, 101/760, 29 S. E. 19.

Jurisdiction to determine as to, not taken on petition of administrator against alleged heirs for interpleader as to their rights. *Duggan*, 110/470, 35 S. E. 670.

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ESTABLISHMENT OF COPIES AND RECORDS. See *Bills*; and *Notes*; *Lost Papers*; *Practice in Courts of Review*; and the cases of *Henry*, 137/

153, 72 S. E. 1021; *Nixon*, 137/516, 73 S. E. 747; *Graham*, 137/668, 74 S. E. 426.

ESTATES. See *Administrators and Executors; Deeds; Dower; Easements; Homestead; Parties; Title; Trusts; Wills; Year's Support.*

Abeyance, holding of estate in. *Knowles*, 132/809, 65 S. E. 128.

Absolute and indefeasible, in child of tenant for life, not created by devise construed. *Boyd*, 141/405, 81 S. E. 205. See citations in *Almand*, 141/375, 376, 81 S. E. 228.

As opposed to defeasible fee. *Crumley*, 135/300, 309, 69 S. E. 531.

Defined. *Trustees*, 141/395, 81 S. E. 238.

In prior clause of will, limited by subsequent one. *Cochran*, 110/764, 765, 36 S. E. 71.

Action maintained by children of heir during her lifetime, for their interest in common with her, taken by them under voluntary settlement by decree. *Bostwick*, 136/54, 76 S. E. 677.

Act of God as excuse of non-performance of condition. *Winn*, 135/383, 69 S. E. 557, 32 L. R. A. (N. S.) 512.

Alienation, restraint on. *Cowart*, 140/435, 452, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Appendant to, personal right in gross, to take fish, was not. *Mallet*, 127/761, 56 S. E. 1015.

"Children," in bequest to, construed. *Davis*, 123/177, 51 S. E. 298; *Fulghum*, 123/258, 51 S. E. 294.

When a word of purchase, and when of limitation; and when only those in being when conveyance took effect were included. *Beauchamp*, 133/412, 65 S. E. 884, *Cooper*, 133/769, 29 L. R. A. (N. S.) 291.

As a class, devise to, by way of remainder; those living at testator's death take; rule same as to executory devise. *Irvin*, 126/729, 55 S. E. 946.

As a class, remainder to, when does

not include a grandchild. *Crawley*, 122/183, 50 S. E. 41, 2 Ann. Cas. 643; *Lyon*, 122/189, 50 S. E. 44. When include after-born child. *Stiles*, 122/635, 50 S. E. 484. After-born children not included in conveyance to husband as trustee for wife and children. *Plant*, 122/763, 50 S. E. 961.

Born after devise or grant, when not included. *Heyward-Williams Co.*, 140/502, 79 S. E. 133.

In being took present estate in fee in common with mother (heir), burdened with her use for life, under decree here construed. *Bostwick*, 136/54, 70 S. E. 677.

Of life-tenant who survived her, excluding issue of deceased child, designated by deed as "such child or children . . . that she . . . may leave in life." *Smith*, 130/532, 61 S. E. 114, 124 Am. St. R. 177.

Of remainderman who died in lifetime of tenant for life took his share. *Almand*, 141/375, 376, 81 S. E. 228. Notwithstanding his conveyance when in life. *Boyd*, 141/405, 81 S. E. 205.

Of vested remainderman take his share by descent he dying in lifetime of tenant for life. *Green*, 143/134, 84 S. E. 552.

Fee taken by child surviving grantee (named as trustee in deed). *Heyward-Williams Co.*, 140/502, 79 S. E. 133.

Chose in action, interest of heir in undistributed estate was. *Arnold*, 122/72, 49 S. E. 812.

Class, conveyance or devise to. *Helmken*, 118/657, 45 S. E. 450. See catchword, "Children."

Condemnation of land, interest acquired upon. *City of Atlanta*, 135/376, 69 S. E. 571.

Condition and covenant in grant, distinguished. *Lawson*, 142/14, 82 S. E. 233.

Deed not construed as grant upon, unless so expressed or such intent be manifest. *Thompson*, 33/540, 66 S. E. 270.

Estate on, not created by recital, as part of consideration, of agreement to

discharge an obligation of grantor. **Bower**, 126/39, 54 S. E. 918.

Precedent, bequest stated by will to be on, held to be in nature of condition subsequent. **Winn**, 135/380, 69 S. E. 557, 32 L. R. A. (N. S.) 512.

Repugnant to estate, void. **Wright**, 140/565, 79 S. E. 546.

Subsequent, breach of, held not to effect forfeiture. Remedy in damages. **Hilton**, 146/812, 92 S. E. 642.

Subsequent, estate in fee on, in consideration of work to be done, in caring for grantor. **Jones**, 132/782, 64 S. E. 1081.

Subsequent, not imported by this deed, but covenant. Damages, not rescission, on breach. **Self**, 139/400, 77 S. E. 562.

Subsequent; right of re-entry on breach, what necessary to give. **Wadley Lumber Co.**, 130/136, 60 S. E. 836.

Subsequent, right to enter on breach of, may be waived. Evidence of waiver. **Wilkes**, 138/407, 75 S. E. 353.

Subsequent, rule as to construction of. **Harrison**, 105/517, 31 S. E. 455. Strict construction against. **Self**, 139/400, 77 S. E. 562.

Subsequent; statement in deed did not constitute, as touching street extension. **City of Atlanta**, 135/376, 69 S. E. 571.

Subsequent, when no injunction on breach of (railroad right of way). **Richmond Cotton Oil Co.**, 134/472, 67 S. E. 1126.

Subsequent, words creating, in deed. **Moss**, 126/196, 54 S. E. 968.

That devisee reside on certain land with others, incapable of performance because of conduct of the others, or from other causes, rejected. **Harrison**, 105/517, 31 S. E. 455.

Title vested by temporary compliance with; not divested by discontinuing compliance. **Parks**, 134/14, 67 S. E. 401, 137 Am. St. R. 209.

Words in deed which would create condition may in a will be construed as a limitation. **Jossey**, 119/758, 47 S. E. 350.

Construction where prior estate is to depend on a prescribed event, and second estate is to arise on the determination of that event. **Jossey**, 119/758, 47 S. E. 350.

Contingent estate vested, not at testator's death, but on death of life-tenant without children. **Crawford**, 110/729, 36 S. E. 404.

Direction as to sale of realty on happening of contingency, and that proceeds vest in named persons, converted realty into personalty, but did not change estate granted. **Collins**, 105/528, 31 S. E. 449.

Subject to testamentary disposition, estate created by deed here held to be. **Collins**, 105/528, 31 S. E. 449.

Not as to person of ulterior legatees, transmissible to legal representatives of those who died after testator and before life-tenant. **Crawford**, 110/729, 36 S. E. 404.

Contract of rental for less than five years, no estate for recovery in ejectment. **Frey**, 148/581, 97 S. E. 529.

Cross-remainders by implication, doctrine of, discussed. **Smith**, 108/233, 33 S. E. 876.

Death, divesting by. **Caruth**, 135/802, 70 S. E. 321.

Estate in event of. **Crumley**, 135/305, 69 S. E. 531.

Decree on equitable petition, acquirement of vested-remainder interests by. **Caruth**, 135/802, 803, 70 S. E. 321.

Defeasance effective by sale under power, not by gift, conveyance on nominal consideration. **Taylor**, 147/761, 95 S. E. 289.

Defeasible, vested estate may be. **Knowles**, 132/806, 810, 65 S. E. 128.

Description, devise void for uncertainty in; and remainderman thereunder could not recover. **Jones**, 142/278, 82 S. E. 626.

Descent to heirs; any estate held by any legal or equitable titile, without actual seisin. **Anderson**, 147/138, 93 S. E. 93.

Determinable on ceasing to remain on land, could not be sold. *Harber*, 126/777, 55 S. E. 928.

On failure to cut described timber within specified period. *Jones*, 141/60, 80 S. E. 7.

Devisee for life, who bought land with money advanced by executor, took title unaffected by right of remaindermen. *Bank of Eton*, 146/464, 91 S. E. 476.

Devise of land to wife, and, on her death, half to son if restored to sanity, and, if he be not restored, the land to be sold and proceeds spent in endowing graves; effect of. *Reynolds*, 129/512, 59 S. E. 299.

To unmarried woman, for wife, and, on failure of children to attain twenty-one years, then over to her husband; husband died and she afterwards died childless; his heirs took. *Jossey*, 119/758, 47 S. E. 350.

Distributee, when not estoppel by disclaimer of interest, made in ignorance of law. *Peyton*, 130/338, 60 S. E. 563, 124 Am. St. R. 170.

Distribution by agreement, according to void will, binds parties *sui juris*, not minors. *Gay*, 101/601, 28 S. E. 1019.

First cousin of half-blood on maternal side preferred to second cousin of whole blood. *Ector*, 112/557, 37 S. E. 984, 53 L. R. A. 723.

Divested by death or marriage. *Caruth*, 135/802, 803, 70 S. E. 321.

Divesting clauses strictly construed, so as to vest estate at earliest possible time. *Patterson*, 147/44, 46, 92 S. E. 882; *Sumpter*, 115/896, 42 S. E. 324, 60 L. R. A. 274.

Dividends on stock, when not apportioned between estate of life-tenant and remainder. *Mann*, 106/818, 32 S. E. 870.

Dower taken, widow's life-estate under will destroyed; not that of children. *Toombs*, 127/767, 57 S. E. 59.

Status of money recovered for, by next friend of insane widow. *Crenshaw*, 127/742, 57 S. E. 57.

"Dying without issue," how construed. *Sterling*, 139/21, 76 S. E. 375.

Easement, not fee, passed under deed here. *Bale*, 123/99, 50 S. E. 990.

Appurtenant to dominant estate passed to successors in title, though no words of assignability in conveyance. *Stovall*, 116/376, 42 S. E. 723.

Cotenant can not convey in common property, without consent. *Charleston R. Co.*, 118/699, 45 S. E. 664.

In gross personal to lessee, right to pump water to mine was not, but was appurtenant thereto. *Featherston, Co.*, 118/564, 45 S. E. 414.

Election of devisee to "remain satisfied," conclusively presumed after thirteen years possession. *Crumpler*, 114/570, 40 S. E. 808.

Emblements, right of undertenant as to, where life-tenant dies during the year. *Story*, 2 A. 119, 58 S. E. 388.

Eminent domain, estate acquired under power of; when an easement, when a fee simple. *Alexander*, 134/849, 855, 68 S. E. 704.

Entry, no right of, in remaindermen until after death of life-tenant. *Bowen*, 135/567, 69 S. E. 1115.

On breach of condition, necessary to revest title in grantor. How asserted and enforced. *Moss*, 126/196, 54 S. E. 968.

Equitable and legal estates. *Woodbery*, 148/712, 718, 98 S. E. 472. Equitable and legal estates in remainder. *Howard*, 142/1, 82 S. E. 292; *McLain*, 142/163, 82 S. E. 544; *Seaboard Air-Line Ry.* 142/317, 82 S. E. 890; *Belt*, 142/366, 82 S. E. 1071. Equitable and legal estates both conveyed by trust deed (antenuptial agreement) here construed. *Cunningham*, 135/715, 70 S. E. 574.

For life; legal, in remainder. *Ballenger*, 147/6, 92 S. E. 514.

Subject to deed to secure loan. *Whitley*, 136/701, 71 S. E. 1103.

Estoppel against assertion of life-estate, where life-tenant procured partition among remaindermen. *Crumley*, 141/603, 81 S. E. 871.

Execution sale freed land from trust or estate created by deed of date later

than execution. **Keaton**, 136/188, 70 S. E. 1110.

Executory devise, consideration of. **Crumley**, 135/300, 304, 69 S. E. 531.

Limitation over by way of, upon happening of contingencies. **Phinzy**, 136/521, 71 S. E. 896.

Limited upon words importing indefinite failure of issue, when held void for remoteness. **Hertz**, 110/707, 36 S. E. 409, 50 L. R. A. (N. S.) 361.

Executory interest, transmissibility of. **Collins**, 105/528, 31 S. E. 449.

"Family," meaning of, in bequest. **Fulghum**, 123/260, 262, 51 S. E. 294.

Fee in common, to wife and grantor's children in life at date of conveyance (1908). **Butt**, 148/672, 97 S. E. 854.

In tenant for life, where no event occurred for vesting of any estate beyond life-estate. **Shewmake**, 148/287, 96 S. E. 564.

To woman, under deed to her and the heirs of of her body. **Griffin**, 101/720, 29 S. E. 29. **Lane**, 147/100, 92 S. E. 887; **Allen**, 147/739, 95 S. E. 288.

Carved into estates for life and in remainder; title to both was conveyed to trustee. **Woodbery**, 148/712, 98 S. E. 472.

Conveyed, and possession postponed until death of another. **Floyd**, 129/675, 59 S. E. 909.

Conveyed, right of possession postponed to death of grantor. **Guthrie**, 105/86, 31 S. E. 40.

Conveyed, unless a less estate mentioned and limited. **Brice**, 118/131, 44 S. E. 843.

Was taken by survivor of tenant for life, under this devise. **Patterson**, 147/44, 92 S. E. 882.

Attempt of grantor to restrict sale of land conveyed in, by grantee, was ineffectual. **Stamey**, 145/226, 88 S. E. 935.

By deed to daughter, her heirs and assigns. Reference to her children conveyed them nothing. **Pace**, 148/507, 97 S. E. 70.

Base, determinable on death of remainderman, became fee simple on

death of tenant for life. **Patterson**, 147/45, 92 S. E. 882.

Base or determinable, by lease for so long as ground-rent paid and covenants complied with. **Penick**, 139/649, 77 S. E. 1055, 46 L. R. A. (N. S.) 284.

Defeasible on dying childless, created by devise here. **Kinard**, 128/485, 57 S. E. 761; **Brown**, 147/1, 92 S. E. 517.

Devisee took estate in, subject to be divested on her death without children, etc. **Taylor**, 144/437, 87 S. E. 469.

Defeasible on death of grantee childless; vested in surviving grantees, not heirs at law. **Barton**, 147/522, 94 S. E. 1007.

Decreed to vest in wife and child of heir, after-born children took no interest. **Dix**, 124/1067, 53 S. E. 571.

Determinable on death without issue, taken by devise here construed. **Tyler**, 124/204, 52 S. E. 606.

Attempt to diminish, by second deed from grantor, was ineffective. **Cox**, 145/448, 89 S. E. 410.

Not conveyed by use of words appropriate to conveyance of fee, where a different intent appeared. **Bale**, 123/99, 50 S. E. 990.

Not defeated by devisee's dying after testator's death; aliter, had he died in testator's lifetime. **Wilcher**, 144/526, 87 S. E. 671.

Not taken, but interest covering fee in one share, subject to be reduced to estate for life, with remainder, etc. **Phinzy**, 136/521, 71 S. E. 896.

Taken by testator's daughters in respective share devised; their children taking no interest. **Crumley**, 135/300, 304, 69 S. E. 531.

Terms expressing conveyance of, limited by language following, showing intention to convey life-estate. **Cobb**, 129/377, 58 S. E. 862.

In trees conveyed, grantor retaining fee in soil. **Baxter**, 106/354, 32 S. E. 94.

Subject to be divested by death without issue living, created by devise here.

Maynard, 129/709, 59 S. E. 798; **Hill**, 123/49, 51 S. E. 81.

Taken on parties "going upon the land to live." **Lowe**, 106/879, 33 S. E. 30.

Forfeiture and re-entry, rights of. **Penick**, 139/652, 77 S. E. 1055, 46 L. R. A. (N. S.) 284.

By breach of condition subsequent, not favored. Applied to devise on conditional limitation. **Parks**, 134/14, 67 S. E. 401, 137 Am. St. R. 209. Not enforced by one not grantor or his privy in estate. **Richmond Cotton Oil Co.**, 134/472, 67 S. E. 1126.

Did not result by suffering third person to enter and erect telephone line. **Hilton**, 146/812, 92 S. E. 642.

Did not result from conveyance by tenant for life. **Howard**, 142/5, 82 S. E. 292. From use of land for other than specified purpose, when. **Lawson**, 142/14, 82 S. E. 233.

For breach of condition subsequent. **Self**, 139/402, 77 S. E. 562; **Groover**, 148/784, 98 S. E. 503.

From breach of condition may be released or waived expressly or impliedly. **Jones**, 132/782, 64 S. E. 1081.

Necessary party to action for. **Kehr**, 132/626, 64 S. E. 673.

Not decreed on mere breach of covenant in deed, as to support of grantor during life. **Self**, 139/400, 77 S. E. 562.

Discharge from employment is not. **Plunkett**, 136/72, 82, 70 S. E. 781, 35 L. R. A. (N. S.) 583, Ann. Cas. 1912B, 125.

For breach of condition subsequent, when not declared. **Thompson**, 133/540, 66 S. E. 270.

For waste by tenant for life; venue of suit by remainderman. **Brown**, 137/338, 73 S. E. 495, 39 L. R. A. (N. S.) 16.

Not enforced by third person. **Jones**, 110/213, 35 S. E. 375.

On breach of condition subsequent, facts did not authorize. **City of Atlanta**, 135/376, 69 S. E. 571; **Winn**,

135/380, 69 S. E. 557, 32 L. R. A. (N. S.) 512.

On breach of condition, waiver of, how limited. **Moss**, 126/196, 54 S. E. 968. Distinction between release and waiver. **Ib.** 207.

Rule as to construction of provisions as to; applied as to condition in devise requiring residence at a certain place. **Harrison**, 105/521, 31 S. E. 455.

"**Heirs**," or its equivalent, not necessary to create absolute estate. **Cooper**, 133/771, 66 S. E. 1090, 29 L. R. A. (N. S.) 291. Heirs, heirs of the body, lineal heirs, lawful heirs, issue, etc., as words of limitation and of purchase. **Crawley**, 122/185, 50 S. E. 41, 2 Ann. Cas. 643. "Heirs of her body," and "her heirs and issue," held to be words of limitation, not of purchase. **Lane**, 147/100, 92 S. E. 887. Heirs of the body. **Ellis**, 110/613, 36 S. E. 97; **Hertz**, 110/710, 36 S. E. 409, 50 L. R. A. (N. S.) 361. "Heirs of their bodies" are words of limitation, not of purchase. First taker has absolute fee. **Chewning**, 106/753, 32 S. E. 544. "Heirs of their body." Use of these words did not prevent result contrary to testator's expressed intent. **Allen**, 147/739, 95 S. E. 288.

Husband of remainderman who left no child took her share as sole heir. **Fields**, 118/573, 45 S. E. 437.

Immediate estate to woman and her children, not including those born after deed executed. **Powell**, 141/793, 82 S. E. 232.

Implication, estates by, not favored. **Sumpter**, 115/900, 42 S. E. 324, 60 L. R. A. 274; **Hill**, 123/58, 51 S. E. 81.

Improvements by life-tenant generally pass to remaindermen, who can not be required to compensate. **Smith**, 133/171, 65 S. E. 414; **Burns**, 145/430, 89 S. E. 418.

Income of residuary share payable during minority of legatee, though estate would revert on his death. **Pearce**, 101/395, 29 S. E. 276.

Indeterminate duration, estate of, treated, on its expiration, as if term originally fixed and certain. **Hayes**, 1 A. 26, 57 S. E. 1087.

In presenti, with possession postponed to grantor's death. **Carter**, 136/700, 71 S. E. 1047; **Pruett**, 136/756, 72 S. E. 30.

Intention as to creation of, controls, **Burney**, 134/141, 147, 67 S. E. 712.

Can not control express enactment of legislature or positive rules of property. **Thompson**, 118/930, 45 S. E. 715.

Of grantor, as to persons who take, gathered from whole instrument. **Stiles**, 122/636, 50 S. E. 484.

Interest devised too shifting and indefinite to be subject to levy and sale. **Hatcher**, 103/843, 31 S. E. 447; **Harber**, 126/777, 55 S. E. 928.

Joint tenancy, intention as to creation of. **Harrison**, 105/521, 31 S. E. 455.

Landlord and tenant, relation of, by grant of right to possess and enjoy land; no title passes. **Potts-Thompson Co.**, 135/457, 69 S. E. 734.

Lease, life-tenant's power to execute, that will not expire on his death. **Hines**, 2 A. 675, 58 S. E. 1124.

Leasehold interest in perpetuity, at option of lessee, creates ownership distinct from the fee. **Wright**, 146/406, 91 S. E. 471.

Estate of tenant at will is. **Hayes**, 1 A. 26, 57 S. E. 1087.

Subject to lien for improvements made thereon. **James G. Wilson Mfg. Co.**, 140/593, 79 S. E. 465. Lessee for five years had no such estate in realty as to make it subject to lien for material furnished to improve it. **Consolidated Lumber Co.**, 142/186, 189, 82 S. E. 532.

Legal, not equitable, estate in remainder was; and trustee took no title thereto. **Vernoy**, 133/654, 66 S. E. 928. **Legal, not equitable, under will here**. **Powell**, 143/728, 85 S. E. 891.

Not vested at once by will here. **Hendricks**, 123/342, 51 S. E. 415.

Legatee's recovery not diminished by improvements erected by tenant for life. **Burns**, 145/430, 89 S. E. 418.

Lesser estate, fee not cut down to, without express direction or clear implication. **Taylor**, 144/440, 87 S. E. 469.

Instrument offered in evidence showing estate less than alleged, admissible. **Hayes**, 1 A. 30, 57 S. E. 1087.

Levy and sale, life-estate subject to. **Armour Fertilizer Works**, 146/196, 91 S. E. 12; **North Ga. Co.**, 138/775, 76 S. E. 95.

Of remainder interest; what description necessary. **Torbit**, 145/610, 89 S. E. 696.

Of vested-remainder interest. **Gibbons**, 146/47, 91 S. E. 482.

Vested-remainder interest was subject to. **Mendel**, 144/107, 86 S. E. 220. **Life-estate subject to, was here created**. **Franklin**, 144/208, 86 S. E. 536.

Life-estate and remainder, takers of, have no joint title. **Shaddix**, 130/764, 61 S. E. 828. **Life-estate and remainder in fee both passed by antenuptial agreement conveying in trust**. **Cunningham**, 135/715, 70 S. E. 574. **Legal title of both was conveyed to trustee**. **Watts**, 148/376, 96 S. E. 863; **Woodbery**, 148/712, 98 S. E. 412.

Conveyed to woman by deed to her and her heirs in fee simple, and after her death to her children. **Cobb**, 129/377, 58 S. E. 709.

Created by deed reserving to grantor use and control of the land during his life. **Shealy**, 115/913, 42 S. E. 239.

Devised, not enlarged into fee by subsequent provision of the same will, that the property should go to the legatees and their heirs and not be subject to their debts. **Kimbrough**, 128/690, 58 S. E. 23.

Conveyed. **Crumley**, 135/307, 69 S. E. 531; **Middlebrooks**, 126/235, 55 S. E. 34.

In half of property devised; in fee in other half. **Lane**, 141/424, 81 S. E. 125.

Life-estate—(Continued).

Reserved by grantor in warranty deed, he keeping "exclusive control." **North Ga. Co., 138/775, 76 S. E. 95.**

Taken by widow under will; there being no child, she took the fee also. **Bowen, 138/398, 75 S. E. 318.**

By deed to man and at his decease to such child as he may leave. **Edwards, 147/12, 92 S. E. 540.**

To devisee under will, with reversion to estate of testator. **Holland, 135/512, 69 S. E. 824.**

When not impeachable for destructive trespass by stranger. **Kehr, 132/626, 64 S. E. 673.**

With remainder to children born and to be born; reformation of deed for mutual mistake. **Kelly, 135/505, 69 S. E. 724.**

With remainder asserted under deed of trust, no ground for proceeding to remove cloud on title. **Howell, 137/710, 74 S. E. 255.**

With remainder, by conveyance in trust; title under conveyance by trustee. **Akers, 147/683, 95 S. E. 241.**

Construction of devisee of stock shares and income therefrom. **Jackson, 136/31, 70 S. E. 865, Ann. Cas. 1912B, 1216.**

With remainder defined, under will construed. **Cock, 148/323, 96 S. E. 628.**

With remainder; reversion on death of life-tenant without heir; title of purchaser from legatees, after division in kind. **Gorley, 142/775, 83 S. E. 790.**

Estate in fee simple not reduced to, by restrictive clause as to sale. **Stam-ey, 145/226, 88 S. E. 935.**

In land, remainder in proceeds of sale of it, under this will. **Evans, 148/44, 95 S. E. 682.**

In woman, with remainder in equal shares to her children and husband, devised. **Boyd, 141/405, 81 S. E. 205.**

Joint, in A and her children with fee-simple estate in remainder to the children surviving her, was created by trust deed here. No merger resulted as to children. **Luquire, 121/624, 49 S. E. 834.**

Life-estate—(Continued).

Not devised by will here construed. **Taylor, 144/437, 87 S. E. 469.**

Of wife, and remainder of child, both passed by conveyance under power of sale. **Vernoy, 133/654, 66 S. E. 928.**

With remainder to heirs other than devisee (widow), by devise construed. **Tyler, 124/204, 52 S. E. 606; Glone, 124/924, 53 S. E. 690.**

Reserved by deed, remainder to grantees, subject to trusts. Power of sale, when not well executed. **Ellis, 110/613, 36 S. E. 97.**

With remainders, with trusts and limitations, under wills construed. **Grayson, 140/467, 474, 79 S. E. 124; Wright, 140/554, 79 S. E. 546.**

Terminating by death; non-liability of undertenant to remainderman. **Story, 2 A. 119, 58 S. E. 388.**

To daughter, remainder in fee to her children, by will. **Brown, 133/345, 65 S. E. 780; Cooper, 133/769, 66 S. E. 1090, 29 L. R. A. (N. S.) 291.**

To widow, legal remainder to children by will, assented to, by executor. **Toombs, 127/767, 57 S. E. 59.**

Was not here conveyed to grantee by deed in trust for his wife and children. **Shepherd, 147/365, 94 S. E. 237.**

Was not in whole of property, but only in an interest as tenant in common with children. **Hammock, 147/828, 95 S. E. 679.**

With base or defeasible fee in remainder, conveyed by deed here construed. **Sterling, 138/21, 76 S. E. 375.**

With contingent remainder, created by deed here. **Riggins, 105/727, 31 S. E. 743.**

Without limitation over; devise of, to sole heir, vests entire estate. **Smith, 129/646, 59 S. E. 915.**

With power in grantee to sell and convey the entire estate in fee, given by deed. **Nort, 136/287, 71 S. E. 471.**

With power to sell and convey fee, created by will construed. **Mayo, 134/737, 68 S. E. 497.**

Life-estate—(Continued).

With remainder contingent on issue of life-tenant. Reversion on failure of such issue. **Kemp, 147/254, 93 S. E. 404.**

With remainder devised, with executory devise to testator's children or representatives. **Murrelle, 142/41, 82 S. E. 456.**

With remainder; effect of conveyance of fee by life-tenant; no prescription against remaindermen. **Stubbs, 143/58, 84 S. E. 126; Hitchcock, 143/377, 85 S. E. 119.**

With remainder, family agreement for division and distribution of land conveyed. **Allen, 138/648, 77 S. E. 1054.**

With remainder, not created. **Walker, 138/548, 77 S. E. 795.**

With remainder on death of grantee, under instrument construed. **Megahed, 146/498, 91 S. E. 677.**

With remainder, by conveyance to woman, "and the heirs of her body after her death." **King, 144/318, 87 S. E. 22; Perkins, 147/122, 92 S. E. 875.**

With remainder to children, and, if none, to other daughters of testator and their children. **Watts, 148/376, 96 S. E. 863.**

With remainder, under devise construed. **Bowen, 135/567, 69 S. E. 1115. Under deed. Smith, 144/115, 86 S. E. 235.**

With "reversion" to heirs; power of sale of whole, though minor heirs living. **County of Bibb, 147/493, 94 S. E. 765.**

With vested remainder, created by deed construed. **Burney, 134/141, 67 S. E. 712; Bush, 141/62, 80 S. E. 286. By will. Wright, 127/369, 56 S. E. 442.**

With vested remainder, under deed to A for life, with equal division to his heirs. **Milner, 145/858, 90 S. E. 65; Overby, 145/875, 90 S. E. 67.**

Interest of trustee under will was limited to. **Patterson, 147/472, 94 S. E. 563.**

Joint, by will here construed. **Satterfield, 132/256, 64 S. E. 60.**

Life-estate—(Continued).

For life of husband, created. **Jones, 138/757, 76 S. E. 55.**

For life of widow, remainder to children; devise construed. **Belt, 142/366, 82 S. E. 1071.**

Equitable, for life of wife. **Jones, 138/758, 76 S. E. 55.**

With remainder to children, by deed. **Burnett, 110/348, 35 S. E. 655. By will. Crawford, 110/729, 36 S. E. 404; Cochran, 110/762, 36 S. E. 71. Life or widowhood, "bequest" of land and personalty was for. Murrelle, 142/41, 82 S. E. 456.**

Estate for, with share in remainder in fee, taken by widow under this devise. **Hanvy, 140/691, 79 S. E. 772.**

Estate for, with vested remainder subject to be divested by death of remainderman before that of widow. Burden of proof of divesting. **Almand, 141/372, 81 S. E. 228.**

Subject to charges imposed, remainder to children; will construed. **Hawks, 141/422, 81 S. E. 200.**

With power of disposal, estate for, devised here. **Melton, 121/693, 49 S. E. 690.**

Will devised, to daughter of testator. Her deed conveyed only a life-estate. **Howard, 142/1, 82 S. E. 292. Life-tenant has right of possession; without his consent or waiver, remaindermen can not consummate agreed partition by entry, etc. Smith, 133/171, 65 S. E. 414.**

Deed by, individually and as trustee for remaindermen, when not canceled. **LaPierre, 145/851, 89 S. E. 1074.**

Entitled to rents of land, as well as interest on money, etc. **Gairdner, 110/456, 35 S. E. 697.**

Lease by, of turpentine privilege, terminates at death. **Johnson, 104/559, 30 S. E. 781.**

Conveyance by, carried only his estate. **Satterfield, 132/256, 64 S. E. 60.**

Power of sale in, exercised by deed not referring to it. Covenant in excess of power, how far effective. **Hilton & Dodge Lumber Co., 141/653, 654, 81 S. E. 1119.**

Limitation not created by clause in deed as to its avoidance on failure to support grantor. Wilkes, 138/407, 75 S. E. 353.

Not made by words "to be disposed of by her at her death as she may think proper." Lane, 141/424, 426, 81 S. E. 125.

Words of, and not of purchase; to E. and "her heirs and issue by" J. E. takes absolute estate. McCraw, 134/579, 68 S. E. 324.

Words creating. Lawson, 142/14, 82 S. E. 233.

Limitation over, on definite failure of issue. Crawford, 110/729, 36 S. E. 404.

By way of executory devise, on death of devisee without child. Brown, 147/1, 92 S. E. 517.

Not postponed beyond length of lives in being at death of testator. Parker, 104/122, 30 S. E. 642.

On marriage of testator's widow, validity of. McCarty, 144/198, 86 S. E. 555.

To grantor's heirs, at death of grantee of remainder, without heirs of her body. Shealey, 115/915, 42 S. E. 239.

To heirs of deceased brothers was to their children. Rogers, 145/236, 88 S. E. 963.

To testator's heirs here was not an executory devise or contingent remainder. Melton, 121/695, 49 S. E. 690.

Whether regarded as perpetuity depends on time of taking effect. Overby, 145/878, 90 S. E. 67.

Not too remote, effect given to; others void. Overby, 145/875, 90 S. E. 67. Limitations over, valid and otherwise. Phinzy, 136/521, 71 S. E. 896.

Marriage, divesting of estate for life by. Caruth, 135/802, 70 S. E. 321.

Provision creating remainder estate was not void as in restraint of. Graham, 147/49, 92 S. E. 871.

Merger, doctrine of, discussed. Coincidence of two independent estates, presently held by one person or class, is necessary for. Luquire, 121/632, 49 S. E. 834.

Conveyance of life-estate to remaindersmen. Rosier, 123/24, 50 S. E. 988.

Easement in one's own property. Grizzard, 136/299, 71 S. E. 430.

Of equitable interest during life of widow with legal remainder, when does not occur. Toombs, 127/767, 57 S. E. 59.

Of estate for life with fee, no intention appearing to keep the two separate. Bowen, 138/398, 75 S. E. 318.

Of lesser into greater. Ach, 118/105, 112, 44 S. E. 870; Green, 118/571, 45 S. E. 420; Charleston R. Co., 118/701, 45 S. E. 664; Thompson, 118/930, 45 S. E. 715.

Of lesser into greater, unless intention otherwise. Goodell, 112/435, 37 S. E. 725. Homestead merged into year's support. Stringfellow, 112/494, 37 S. E. 767; Miller, 105/55, 31 S. E. 122.

Of life-estate and power of disposition by will, with inheritance of contingent interest in reversion. Wilder, 102/44, 29 S. E. 134.

Of life-estate and remainder. Smith, 129/646, 59 S. E. 915.

When occurs, and when not. Hamilton, 126/28, 54 S. E. 926; Moss, 126/208, 54 S. E. 968; Muscogee Mfg. Co., 126/211, 54 S. E. 1028, 7 L. R. A. (N. S.) 1139.

Minors' legal estate in remainder, validity of, order in term for lease of. Palmer Brick Co., 135/450, 69 S. E. 827.

Particular estates for daughters in shares falling to them in division of testator's estates. Wadley, 139/177, 77 S. E. 47.

Partition in behalf of devisees. Wright, 140/567, 79 S. E. 546.

Of land among tenants for life, and deeds by executors to each of them, effect of. Watkins, 130/797, 62 S. E. 32.

Perpetuities, rule against. Grayson, 140/469, 474, 79 S. E. 124; Wright, 140/554, 79 S. E. 546.

Rule against creation of, violated by deed construed. Overby, 145/875, 90 S. E. 67.

Rule against; validity of limitation over. *Phinizy*, 135/521, 71 S. E. 896.

Devise here not void as attempt to create perpetuity. *Jossey*, 119/758, 47 S. E. 350.

Vesting of estate after attempt to create perpetuity, giving effect to limitations not too remote. *Shewmake*, 148/287, 96 S. E. 564.

Possession, vested remainder became an estate in, on death of tenant for life. *Overby*, 145/875, 90 S. E. 67.

Postponement of enjoyment of estate. *Wright*, 140/562, 79 S. E. 546.

Power of appointment by will conferred by deed on life-tenant, as to the whole estate, was extinguished by conveyance to remaindermen here. *Rosier*, 123/21, 24, 50 S. E. 988.

Of disposal was not inconsistent with life-estate, and did not enlarge it. *Melton*, 121/695, 49 S. E. 690.

Of life-tenant to authorize trustee to sell, lost by her conveyance to remaindermen. *Rosier*, 123/25, 50 S. E. 988.

Of sale coupled with interest in donee; his deed was exercise of the power. *Nort*, 136/287, 71 S. E. 471.

To apportion property and appoint takers, execution of, by will, without direct reference. *Grayson*, 140/467, 79 S. E. 124.

Present estate, deed ineffective for want of words conveying. *Caldwell*, 140/736, 79 S. E. 853.

Not conveyed to grantee (trustee) and her children by this deed. *Heyward-Williams Co.*, 140/504, 79 S. E. 133.

Remainder or residue of devised property, interest in, included share in reversion. *DeVaughn*, 144/743, 87 S. E. 1022.

Acceleration of, by termination of whole of particular estate, not merely of interest of one of several. *Toombs*, 127/767, 57 S. E. 59.

After estate for life; deed construed. *Heyward-Williams Co.*, 140/502, 506, 79 S. E. 133.

After life-estate of cotenant. *Hammock*, 147/828, 95 S. E. 679.

Remainder—(Continued).

An equitable, not a legal estate, where trust executory until remaindermen ascertained. *Watts*, 148/376, 96 S. E. 863; *Woodbery*, 148/712, 98 S. E. 472.

Bequest to daughter's children, with provision that the share of any of them dying without a child should revert to the survivors, did not create remainder in a child of one of them. *Hill*, 123/49, 51 S. E. 81.

Claim of title in, was inferior to title acquired under sale by life-tenant under power. *Mayo*, 134/738, 68 S. E. 497.

Contingent and vested, rules as to. *Crawley*, 122/184, 186, 50 S. E. 41, 2 Ann. Cas. 643.

Contingent as to person, no title in, before death of tenant for life. *Town of Decatur*, 144/728, 87 S. E. 1036.

Contingent becoming vested, falling in enures to benefit of grantee in previous conveyance. *Isler*, 134/192, 67 S. E. 854.

Contingent, defeated by non-happening of contingency. *Kemp*, 147/254, 93 S. E. 404. Where no one to take it exists before termination of estate for life. *Edwards*, 147/12, 92 S. E. 540.

Contingent, estate in. *Crumley*, 135/300, 308, 69 S. E. 531; *Wright*, 140/554, 79 S. E. 546.

Contingent, not necessarily an equitable estate; fact that it is contingent considered in arriving at intention of grantor, in construing character of estate passing to trustee. *Smith*, 123/291, 51 S. E. 474, 107 Am. St. R. 85.

Contingent on death of unmarried son leaving no wife or child, by will here construed. *Knowles*, 132/806, 65 S. E. 128.

Contingent on devisee leaving children living at her death. *Lane*, 138/710, 76 S. E. 47.

Contingent on grantee not consuming entire corpus for her support; deed construed. *Huff*, 138/613, 75 S. E. 662.

Remainder—(Continued).

Contingent on life-tenant's survival of testator, under devise here. **Oetjen**, 115/1005, 42 S. E. 388.

Contingent on surviving another, construed to exist; not subject to levy and sale. **Watson**, 103/733, 30 S. E. 577.

Contingent or vested; previous decisions compared. **Cock**, 148/324, 96 S. E. 628.

Contingent, devisable. **Collins**, 105/525, 31 S. E. 449.

Contingent, taken under will construed. It was devisable. **Wiley**, 140/16, 17, 78 S. E. 335.

Contingent until birth of child in whom it vested, subject to open, and to be divested. **Cock**, 148/324, 96 S. E. 628; **Gibbons**, 146/467, 91 S. E. 482.

Contingent, under deed construed. **Jones**, 138/757, 76 S. E. 55.

Contingent, vesting, on death of life-tenant, in class designated. **Smith**, 130/532, 61 S. E. 114, 124 Am. St. R. 177.

Covered by grant of right in life-tenant to confer power of sale on trustee. **County of Bibb**, 147/493, 94 S. E. 765.

Defeasible, conveyance of. **Sumpter**, 115/894, 900, 42 S. E. 324, 60 L. R. A. 724.

Defeasible estate in fee, subject to be divested on death of tenant without issue. **Daniel**, 102/181, 28 S. E. 167.

Devise in, not rendered void by alternative expression of devisor's name in English and German. **Tyler**, 124/204, 52 S. E. 606.

Equitable estate in. **Jones**, 138/757, 76 S. E. 55.

Equitable, not legal, remaindermen barred where trustee barred by his sale and lapse of time thereafter. **Johnson**, 122/524, 50 S. E. 367. Legal here; and no right of action by remainderman until death of life-tenant. **Stiles**, 122/635, 50 S. E. 484.

Estate taken by children of heir was not merely in, after termination of life-estate. **Bostwick**, 136/54, 70 S. E. 677.

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Remainder—(Continued).

Gift not good as, good as executory devise. **Irvin**, 126/732, 55 S. E. 946.

In fee to children of distributee. Will construed. **Wadley**, 139/177, 77 S. E. 47.

In fee, under deed to daughters and the heirs of their bodies. **Ellis**, 110/613, 36 S. E. 97.

Inheritance tax on, how computed, and when collected. **Martin**, 144/605, 87 S. E. 793.

In money, created by executory bequest. **Crawford**, 110/729, 36 S. E. 404.

In choses in action, protection of, on delivering them to legatee having life interest. **DeLoney**, 128/780, 58 S. E. 349.

Legal, by will. **Toombs**, 127/767, 57 S. E. 59.

Legal estate for minors in; order in chancery for lease. **Palmer Brick Co.**, 135/450, 69 S. E. 827.

Legal, not covered by trust, under this devise. **DeVaughn**, 140/208, 78 S. E. 844.

Legal, not equitable, under will. **C. & W. R. Co.**, 105/11, 30 S. E. 972.

Life-tenant may be interested in. **Hanvy**, 140/695, 79 S. E. 772.

Limitation that can take effect as, not construed as executory devise. **Glore**, 124/924, 53 S. E. 690.

Limited to surviving children of life-tenant, by conveyance here. **Luquire**, 121/624, 49 S. E. 834.

Not covered by trust here. **Luquire**, 121/624, 49 S. E. 834; **Rosier**, 123/20, 50 S. E. 988; **Smith**, 123/287, 51 S. E. 474, 107 Am. St. R. 85.

Not created by deed here. **Trammell**, 115/874, 42 S. E. 246.

Not destroyed by second conveyance to life-tenant, reciting that former deed is revoked and annulled. **Stubbs**, 143/56, 84 S. E. 126; **Hitchcock**, 143/377, 85 S. E. 119.

Subject to be divested only in circumstances as stated in deed. **Taylor**, 147/761, 95 S. E. 289.

Subservient to power of sale in tenant for life. **Hilton & Dodge Lumber Co.**, 141/655, 81 S. E. 1119.

Remainder—(Continued).

Title to, did not pass by private sale of land by executrix (tenant for life) **Evans, 148/44, 95 S. E. 682.**

To children as a class, how construed where no remaindermen in esse. **Gibbons, 146/467, 91 S. E. 482**

To children as a class, vested, and subject to open for after-born children. **Milner, 145/858, 90 S. E. 65. Overby, 145/875, 90 S. E. 67.**

To grantee in fee, subject to be divested on her death without children, created by deed here. **Shealy, 115/915, 42 S. E. 239.**

Under deed here was legal. **Tillman, 116/250, 42 S. E. 517.**

Undevised, went to tenant for life (husband of devisor), if no child. **House, 148/472, 97 S. E. 80.**

Vested and defeasible; substituted devisees. **Speer, 145/852, 90 S. E. 57.**

Vested, and subject to be divested under deed construed. **Smith, 144/115, 86 S. E. 235.**

Vested at death of tenant for life; not at death of testator. **Patterson, 147/44, 92 S. E. 882.** At death of second tenant for life, prior to that of first one. **Graham, 147/49, 92 S. E. 871.** Passes to heirs of remainderman who dies before death of tenant for life. Subject to open and let in children afterward born. **Anderson, 147/138, 141, 93 S. E. 93.**

Taken by each set of representatives of children, per stirpes, under this devise. **Speer, 147/102, 92 S. E. 870.**

Vested by deed in 1879, subject to be divested by death. **Fields, 118/573, 45 S. E. 437.**

Vested indefeasibly in survivor of testator and tenant for life, under this devise. **Dickinson, 134/813, 68 S. E. 728.**

Vested in fee, subject to be divested on death without issue, taken under this will. **Chewning, 106/752, 32 S. E. 544.**

Vested in life-tenant's children living at testator's death, under this devise. **Green, 143/134, 84 S. E. 552.**

Remainder—(Continued).

Vested in living children, subject to open and let in children born thereafter. **Burney, 134/141, 67 S. E. 712.**

Vested in possession, by application of rule against perpetuity. **Overby, 145/875, 90 S. E. 67.**

Vested in R. under devise to him and his heirs. His children took no interest. **Ragan, 146/818, 92 S. E. 647.**

Vested, in testator's children, subject to be divested as to any of them dying during the life-tenancy, without a child who survived the life-tenant. **Sumpter, 115/893, 42 S. E. 324, 60 L. R. A. 274.**

Vested in testator's lawful heirs at his death, other than his wife, subject to be defeated by exercise of power of disposal by her, and subject, if she remarried, to having her included in the remaindermen. **Melton, 121/693, 49 S. E. 690.**

Vested in wife, who survived husband, was not subject to levy and sale for his debt in 1853. **Doane, 132/451, 64 S. E. 646.**

Vested, not contingent, taken under devise here construed. **Mendel, 144/107, 86 S. E. 220.**

Vested, on footing of a chose in action. **Doane, 132/451, 64 S. E. 646.**

Vested or contingent; and whether subject to be divested. **Almand, 141/373, 81 S. E. 228; Boyd, 141/405, 81 S. E. 205.**

Vested or contingent, determination of question as to. **Cooper, 133/773, 66 S. E. 1090, 29 L. R. A. (N. S.) 291.**

Vested or contingent, doubt as to, resolved in favor of vesting. Effect of words relating to time. **Burney, 134/147, 67 S. E. 712.**

Vested, possession postponed to death of tenants for life. **Caruth, 135/802, 70 S. E. 321.**

Vested, right to sell and convey. **Ragan, 146/818, 92 S. E. 647.**

Vested, subject to be divested on failure of issue during life of another, by will. **Satterfield, 132/256, 64 S. E. 60.**

Remainder—(Continued).

Vested, subject to divestiture; action by remaindermen did not lie before death of life-tenant. **LaPierre**, 145/851, 89 S. E. 1074.

Vested, subject to levy and sale, none under will here construed. **Mattox**, 130/461, 60 S. E. 1066.

Vested, subject to open and let in children. **Sumpter**, 115/894, 42 S. E. 324, 60 L. R. A. 274.

Vested, to children in esse when deed executed, subject to reopen for afterborn children. **Milner**, 145/858, 90 S. E. 65; **Overby**, 145/875, 90 S. E. 67.

Vested, taken by testator's children surviving him. **Crossley**, 130/783, 61 S. E. 851, 14 Ann. Cas. 703.

Vested under will here; authorized remainderman to resist levy and sale of fee. **Watson**, 103/733, 30 S. E. 577.

Vested, when no jurisdiction to decree sale of, on application of trustee. **Overby**, 145/880, 90 S. E. 67.

Vested, when not divested by death of remainderman childless, before death of life-tenant. **Fields**, 118/574, 45 S. E. 437.

Vesting of, favored; but intent controls in referring words of survivorship. **Sterling**, 139/21, 24, 76 S. E. 375.

Vesting of, favored. May be absolutely or defeasibly vested. Vestings of title and of possession. **Speer**, 145/854, 90 S. E. 57; **Overby**, 145/875, 90 S. E. 67.

Was shared in by children born after will took effect, as tenants in common with other children. **Smith**, 136/755, 72 S. E. 40.

When cast on life-tenant, by operation of law. **Smith**, 129/646, 59 S. E. 915.

Vested and contingent, discussed. **Fields**, 113/575, 45 S. E. 437.

In trust, under will and deed. **Walker**, 101/665, 29 S. E. 8; **New S. B. & L. Asso.**, 101/678, 29 S. E. 15.

Held to have been legal, not equitable. Trust for life-estate did not extend to. **Howard**, 142/1, 82 S. E. 292;

Seaboard Air-Line Ry., 142/317, 82 S. E. 890; **Belt**, 142/366, 82 S. E. 1071.

Remainderman contingent, property of, can not legally be disposed of by order at chambers in vacation. **Powell**, 143/728, 85 S. E. 891.

Action by person claiming under, to recover land from lessee of life-tenant and widow of other remainderman, not supported here. **Furr**, 124/72, 53 S. E. 201.

Vested, conveyance by, before death of tenant for life carried his interest. His death before that of life-tenant carried no interest to his child. **Crossley**, 130/783, 61 S. E. 851, 14 Ann. Cas. 703.

Death of, without children surviving, allegations not sufficient to show. **Furr**, 124/742, 53 S. E. 201.

Children of, who survived him took through him, and his interest was subject to the lien of judgments against his estate. **Melton**, 121/693, 49 S. E. 690.

Recovery by, of mesne profits in ejectment, how limited. **Ayer**, 147/715, 95 S. E. 257.

Right of, to rent after death of life-tenant, when inferior to right of transferee of rent notes. **Hines**, 2 A. 675, 58 S. E. 1124.

Title of, perfected by assent of executor to legacy to life-tenant. **Moore**, 148/77, 95 S. E. 965.

With power of disposition by will, became owner of fee as sole heir of life-tenant. **Wilder**, 102/44, 29 S. E. 134.

Remaindermen as affected by agreed division between legatees one of whom is tenant for life. **Fulton**, 140/66, 78 S. E. 414.

As well as life-tenants are represented by executors suing to recover land to execute will. **Winn**, 147/427, 94 S. E. 468.

Contingent; rights cut off but decree not rendered void. **Payne**, 110/549, 36 S. E. 89.

Could not enter as on forfeiture on conveyance of fee by life-tenant. No

Remaindermen—(Continued).

prescription against them until her death. *Allen*, 106/779, 32 S. E. 927.

Death of, without children surviving, allegations not sufficient to show. *Furr*, 132/83, 53 S. E. 201.

No prescriptive title against, within seven years after removal of disability (minority). *Ballenger*, 147/5, 6, 92 S. E. 514.

Not entitled, on petition of executors, to restrain transferees of rent note given to life-tenant, who died before crops sown, from collecting it. *Wilson*, 130/120, 60 S. E. 261.

Not entitled to possession or to sue before death of tenant for life, prescription did not run against them till then. *Glore*, 124/923, 53 S. E. 690.

Not estopped from recovering land, by order of court for sale, and deed of trustee. *Wadley*, 139/179, 77 S. E. 47.

Right of, to have administrator enjoined from selling land. *Beaty*, 110/581, 35 S. E. 770.

Under devise to trustee, barred by prescription when trustee barred. *McLain*, 142/163, 82 S. E. 544. See *Howard*, 142/1, 82 S. E. 292; *Belt*, 142/366, 82 S. E. 1071.

Remoteness, estate void for; life of the last wife of grantee. *Overby*, 145/875, 90 S. E. 67.

Representation, children of remainderman took by. *Fields*, 118/573, 45 S. E. 437.

Represented by trustee, estates were. *Jones*, 138/758, 76 S. E. 55.

Restraint upon alienation of fee-simple, void. *Crumpler*, 114/570, 40 S. E. 808.

Reversion after homestead expired. *Aiken*, 139/15, 76 S. E. 359.

Defined. When not effected by use of part of land for different purpose. *Lawson*, 142/14, 82 S. E. 233.

In land set apart as dower, administrator's unlawful sale of. *Sutton*, 144/587, 87 S. E. 799.

Of head of family in land set apart, conveyed by his deed. *Carrie*, 145/184, 88 S. E. 949.

Reversion—(Continued).

On failure of contingent remainder, is in grantor and his heirs. *Edwards*, 147/12, 92 S. E. 540. Tenant for life took no share in, by inheritance. *Kemp*, 147/254, 93 S. E. 404.

Estate in, subject to disposition by devisee for life or widowhood. *Tyler*, 124/208, 52 S. E. 606.

Estates in. *Penick*, 139/653, 77 S. E. 1055, 46 L. R. A. 284.

Excluded by election of devisee to "remain satisfied" on land, i. e. take the fee. *Crumpler*, 114/570, 40 S. E. 808.

Interest in, not disposed of by will, passes to heirs of the testator. *Glore*, 124/924, 53 S. E. 690.

None under deed of trust for church, here construed. *Huger*, 137/205, 73 S. E. 385.

Of land on ceasing to be used for railroad purposes. *Moss*, 126/196, 54 S. E. 968.

Of timber right, recital in deed did not operate as. *Sirmans*, 130/82, 60 S. E. 267.

On ceasing to use property for purpose for which condemned or acquired. *City of Atlanta*, 135/376, 69 S. E. 571.

On death of devisee without child, to heirs of testator. *Brown*, 147/1, 92 S. E. 517. On defeat of conditional grant, to later (unconditional) grantee; not to heirs of grantor. *Irby*, 147/329, 93 S. E. 877.

Under devise did not occur, where devisee who died without issue took his share at majority. *Perdue*, 142/309, 82 S. E. 884.

Vests in heirs at testator's death, with right of possession postponed until termination of life-estate devised; does not remain in abeyance. *Oliver*, 114/593, 40 S. E. 826.

Reverter, possibility of, when not an estate in the land. *Wadley Lumber Co.*, 130/138, 60 S. E. 836.

Right of, lost by merger of condition of previous contract into deed absolute. *Aug. Land Co.*, 140/519, 79 S. E. 138.

Rule in Shelley's case. **Wright**, 140/559, 79 S. E. 546.

In Wild's case. **Dix**, 124/1070, 53 S. E. 571; **Cooper**, 133/773, 66 S. E. 1090, 29 L. R. A. (N. S.) 291; **Heyward-Williams Co.**, 140/504, 79 S. E. 133; **Riggins**, 105/730, 31 S. E. 743; **Burnett**, 110/350, 35 S. E. 655; **Crawford**, 110/730, 36 S. E. 404; **Sumpter**, 115/901, 42 S. E. 324, 60 L. R. A. 274.

In Shelley's and Wild's cases, devise without and within. **Crawley**, 122/183, 185, 50 S. E. 41, 2 Ann. Cas. 643. Estates tail abolished; conveyance to or for woman and her children included only children in esse, not those thereafter born. **Plant**, 122/765, 50 S. E. 961.

Sale by life-tenant, under void judgment, of property devised in remainder, when remainderman estopped from attacking. **Hicks**, 127/170, 56 S. E. 307.

Tenant for life can not dispose of the fee. **Crowley**, 114/139, 39 S. E. 904.

Seisina facit stipitem, not of force in Georgia since statutes of 1785, 1789, and 1804. **Oliver**, 114/600, 40 S. E. 826.

Separate estate in daughter, not created by will probated in 1847, and husband's marital rights attached. **Crawford**, 110/729, 36 S. E. 404.

Statute of uses, effect of, though words of trust used. **Thompson**, 118/930, 45 S. E. 715.

Stock-share income to life-tenant, who took only income (not corpus) of additional shares from surplus. **Jackson**, 136/31, 70 S. E. 865, Ann. Cas. 1912B, 1216.

Surviving children, devise to, construed. **Guinn**, 134/783, 68 S. E. 508; **Dickinson**, 134/813, 68 S. E. 728.

Survivorship contemplated referred to death of tenant for life, not that of testator. **Smith**, 136/756, 72 S. E. 40.

Share of one of two devisees vested in the other by reason of. **Foster**, 135/591, 69 S. E. 1110.

Words of, how dealt with. **Foster**, 135/591, 593, 59 S. E. 1110.

Words of, referred here to death, not of testator, but of tenant for life. **Patterson**, 147/44, 92 S. E. 882.

Words of, referring to death of testator or to a future time. **Wilcher**, 144/526, 528, 87 S. E. 671.

Tail, conveyance not in, under this instrument. **Megahee**, 146/498, 91 S. E. 677. Estate tail by implication, under statute de donis, by devise before act of 1854, enlarged to fee-simple by act of 1821. **Hertz**, 110/707, 36 S. E. 409, 50 L. R. A. (N. S.) 361. Conveyance to woman and her bodily heirs creates estate in fee simple. **Stamey**, 145/226, 88 S. E. 935. Fee tail, express or implied, converted into absolute estate. **Megahee**, 146/500, 91 S. E. 677. Estate tail, express or by implication, distinguished. **Megahee**, 146/500, 91 S. E. 677. Estate tail, not created here. **Sumpter**, 115/900, 42 S. E. 324, 60 L. R. A. 274. Words which would create. **Shealy**, 115/914, 42 S. E. 239. Entails prohibited, never implied. **Cooper**, 133/771, 66 S. E. 1090, 29 L. R. A. (N. S.) 291.

Tenancy at will, and by sufferance, defined. **Willis**, 118/906, 45 S. E. 794.

Tenants in common for life, daughters took as, with cross-remainders implied. **Smith**, 108/233, 33 S. E. 876.

Testator's daughter, and her children born after his death and in esse at death of life-tenant, under devise of remainder interest. **Sumpter**, 115/894, 42 S. E. 324, 60 L. R. A. 274.

Mother and children were, for her life, with remainder as to her interest. **Hammock**, 147/828, 95 S. E. 679.

Rights of, as to improvements and partition of lands. **Smith**, 133/171, 65 S. E. 414.

Not created, devisee having no children at death of testatrix. **Taylor**, 144/440, 87 S. E. 469.

Where granting clause conveyed to daughter, "her heirs and assigns," and habendum was to her and her daughters (named), "made equal as heirs."

Huie, 105/319, 31 S. E. 189. Common, with condition subsequent, devise of land to named persons "in common, for a home and support so long as they remain together," with further restrictions; when held absolute. Harrison, 105/517, 31 S. E. 455.

Termination of timber rights; issue of reasonable time; burden of proof on special facts. Shippen Lumber Co., 136/37, 70 S. E. 672.

Testator's children took fee-simple estate; residue held by survivor of them went to her heirs. Allen, 147/739, 95 S. E. 288.

Timber conveyance, time limit in, is no limitation directly upon the estate, but on the license of entry to cut and remove. McLendon, 2 A. 424, 58 S. E. 690.

Title to realty and personalty, how vests, upon death of owner. Carr, 116/373, 42 S. E. 726.

Trees growing, nature of estate conveyed by deed to. N. Ga. Co., 128/563, 57 S. E. 873.

Trust, as to remaindermen, not affected by adoption of married woman's act of 1866. Wadley, 139/178, 77 S. E. 47.

Covered estate for life, not legal estate in remainder, under this deed. Lee, 124/497, 52 S. E. 806.

Created by deed did not apply to legal remainder. Smith, 144/115, 86 S. E. 235.

Created by deed extended over both life-estate and remainder. Gunby, 146/536, 91 S. E. 556. By will. Ayer, 146/608, 612, 91 S. E. 548.

Deed in, conveying equitable estate for life of mother, remainder to children, construed. Richards, 106/615, 33 S. E. 193.

Executed, not executory. Smith, 144/115, 86 S. E. 235. Dry or passive trust would be, as minors reached majority. Fleck, 144/732, 87 S. E. 1055.

Executory under deed here creating life-estate with contingent remainder; not executed by married woman's act

of 1866. Riggins, 105/727, 31 S. E. 743.

Extended to life-estate, not to remainder. Ballenger, 147/6, 94 S. E. 514.

For married woman, executed by act of 1866. McCraw, 134/579, 68 S. E. 324.

For unborn children to take in remainder with mother, created in her here. Sumpter, 115/906, 42 S. E. 324, 60 L. R. A. 274.

Future-born children as beneficiaries of. Knowles, 132/809, 65 S. E. 128.

In executor, not executed. Toombs, 127/770, 57 S. E. 59.

Created for life-estate only. Remaindermen not represented by trustee. Seaboard Air-Line Ry., 142/317, 82 S. E. 890. See Howard, 142/1, 82 S. E. 292; Belt, 142/366, 82 S. E. 1071. Compare McLain, 142/163, 82 S. E. 544.

Title in fee vested in trustees; their duties; trust remainder executory until what event. Wadley, 139/178, 77 S. E. 47.

To devise land to daughter, deed to husband and petition to allow wife to execute same, construed as creating. McCreary, 103/528, 29 S. E. 960.

Under deed was limited to life-estate. Powell, 143/728, 85 S. E. 891.

Trustee took only estate for life, not the remainder. Richards, 106/615, 33 S. E. 193; Allen, 106/775, 32 S. E. 927.

Legal estate in executor as, until happening of contingency of marriage, etc. Knowles, 132/809, 65 S. E. 128.

Took life-estate subject to be divested if he sold the property. Crowley, 141/135, 39 S. E. 904.

Under will, took legal title to life-estate. C. & W. C. R. Co., 105/11, 30 S. E. 972.

Value of estate of indeterminate duration, how ascertained. Hayes, 1 A. 31, 57 S. E. 1087.

Vested estates favored by law. Glone, 124/924, 53 S. E. 690.

In grantee, though grantor reserved right of possession for his life. He could not devise rents. **Puett**, 144/193, 86 S. E. 547.

Interest descendible to heir. **Guinn**, 134/782, 68 S. E. 508.

Interest; equitable title during life of devisee in trust; fee simple on his death. **Sanders**, 146/784, 92 S. E. 531.

Remainders; vested favored, rather than contingent. **Fields**, 118/575, 45 S. E. 437.

Vesting not prevented by postponing enjoyment of fee-simple title until death of trustee. **Sanders**, 146/784, 92 S. E. 531.

Of estates at earliest time, favored. **Crumley**, 135/308, 69 S. E. 531.

Waiver of life-estate, and erection of improvements by remaindermen on faith thereof. **Crumley**, 141/603, 81 S. E. 871.

Waste, life-estate not forfeited for, if not licensed or negligently suffered by tenant for life, who is necessary party to action. **Kehr**, 132/626, 64 S. E. 673.

Widowhood, estate during, subject to rules governing life-estates. **Glore**, 124/924, 53 S. E. 690.

Estate during, valid. **McCarty**, 144/198, 86 S. E. 555.

Widow takes no absolute estate, unless she elect in a year. **Farmers Banking Co.**, 112/301, 37 S. E. 447.

Of intestate not presumed to take vested estate in his realty, if no affirmative election of child's part. **Heard**, 146/719, 92 S. E. 211.

Will, language of, whether creating estate with remainder, defeasible or base fee, or estate tail. **Wilcher**, 144/526, 87 S. E. 671.

Vested interest under residuary clause of, not shown by legatee suing. **Moore**, 144/460, 87 S. E. 403.

Words of limitation defining duration, distinguished from words creating condition which, if void, would render estate absolute. **Crumpler**, 114/574, 40 S. E. 808.

Of limitation and of purchase. **Megahee**, 146/498, 91 S. E. 677.

Years, estate for, subject to sale and to levy. **James G. Wilson Mfg. Co.**, 140/593, 79 S. E. 465.

Estate for, nature of, discussed. **Hutcheson**, 115/993, 42 S. E. 422.

Estate for, passes as realty. **Wright**, 146/410, 91 S. E. 471.

ESTOPPEL. See **Accord and Satisfaction**; **Bonds**; **Claims**; **Deeds**; **Dower**; **Election of Remedy**; **Evidence**; **Gifts**; **Husband and Wife**; **Insurance**; **Judgments**, catchwords "Conclusiveness," "Estoppel;" **Landlord and Tenant**; **Levy and Sale**; **Limitation of Actions**; **Mortgages**; **Partnership**; **Penitentiary Company**; **Ratification**; **State**; **Streets**; **Title**; **Waiver**.

Acceptance of check for less than amount claimed to be due, and retention of proceeds, when estopped creditor from recovering more. **Hamilton**, 105/300, 31 S. E. 194.

Of deed, and taking possession of property, binds taker by covenant. **Union City Co.**, 138/704, 76 S. E. 35.

Of offer, estoppel to deny, not result of conduct here. **Evans**, 21 A. 114, 118, 93 S. E. 1023.

Of property, when no waiver of damages from breach of contract. **Alabama Con. Co.**, 131/371, 62 S. E. 160.

Of services, allegations as to, not sufficient to show estoppel. **First National Bank**, 103/722, 30 S. E. 669.

See catchword **Benefit**.

Acquiescence by acts or declarations, effect of, as to boundary line. **Ivey**, 124/159, 52 S. E. 436, 110 Am. St. R. 160. As to act of agent. **Neal**, 124/511, 52 S. E. 622.

By silence. **Peninsular Naval Stores Co.**, 13 A. 780, 80 S. E. 28.

Heirs not held to have acquiesced in executor's unauthorized deed of which they had no notice. **Hosch Lumber Co.**, 123/339, 51 S. E. 439.

Acquiescence—(Continued).

In building railroad track, did not estop one who had acquired the right to construct a tramroad across the same land. *Perkins Lumber Co.*, 117/441, 43 S. E. 692.

May sometimes amount to waiver. *Alabama Con. Co.*, 131/371, 62 S. E. 160.

Of landowner where railroad company builds track on his land, effect of. *C. & W. C. R. Co.*, 105/15, 30 S. E. 972; *A., K. & N. R. Co.*, 105/534, 31 S. E. 452.

Of owner in sale of land by another. *Parrott*, 105/97, 31 S. E. 417.

Action for part of amount due estopped subsequent suit for remainder. *Willingham*, 13 A. 254, 79 S. E. 496.

In sale by another, when owner is estopped by. *Allen*, 8 A. 313, 68 S. E. 1073.

For purchase-money paid, recovery in, no bar to suit for trespass by unlawful seizure of the property. *Henson*, 108/567, 33 S. E. 911.

Acts or declarations inducing conduct or dealing not otherwise begun, effective as. *Bailie*, 141/806, 82 S. E. 232. Acts or words raising; notice essential. *Oats*, 136/704, 71 S. E. 1097. See *Mercer*, 136/632, 71 S. E. 1075. Act forbidden by law, not made binding by estoppel or ratification. *Swindell*, 3 A. 364, 60 S. E. 13.

Adjournment of term of court, request for, did not prevent objection to time to which court could not be legally adjourned. *Walker*, 23 A. 22, 97 S. E. 276.

Administration letters on estate of A denied on caveat, no bar to application for letters on estate of A's heir. *Pollock*, 108/430, 34 S. E. 213.

Of estate, no estoppel against procuring, because of long delay. *McArthur*, 139/304, 77 S. E. 150.

Administrator (temporary) could not raise, in defense to suit on bond, from ordinary's order and request of widow. *Irvine*, 145/868, 90 S. E. 69.

Making unauthorized sale, or allowing sale under void *fi. fa.*, not prevent-

Administrator—(Continued).

ed from recovering the property. *Rutherford*, 102/52, 28 S. E. 1019.

Of deceased grantor cannot recover property transferred to defeat creditors. *Perry*, 137/427, 73 S. E. 656.

Of fraudulent grantor cannot recover the property to pay debts. *Boswell*, 147/734, 95 S. E. 247.

Admission in replevying property, as to ownership; when estoppel. *Shealey*, 8 A. 642, 70 S. E. 100.

In suing out warrant voluntarily dismissed, no estoppel, when. *Wilkins*, 8 A. 183, 68 S. E. 941.

In affidavit of illegality, estoppel to deny signature to bond. *Mims*, 8 A. 850, 70 S. E. 139.

Not acted on by opposite party, no estoppel. *Jordan*, 17 A. 58, 86 S. E. 278; *Thornton*, 108/3, 33 S. E. 680; *Rich*, 126/467, 55 S. E. 336.

Of liability, when estoppel. *Wolff*, 105/153, 31 S. E. 425.

Of oral authority to sell land, when operates as. *Northington*, 118/584, 45 S. E. 447.

Of fact in pleadings, operation of, how limited. *Harris*, 101/641, 29 S. E. 302.

In pleading, party making, not estopped to deny. *People's Bank*, 114/603, 40 S. E. 717; *Ala. R. Co.*, 114/627, 40 S. E. 794.

Capable of explanation, and admission in *judicio*, effect of. *Rowe*, 3 A. 506, 60 S. E. 275.

Withdrawn or stricken cannot be treated as an admission in *judicio*, effecting an estoppel. *McConnell*, 146/475, 91 S. E. 550.

In *judicio*, estoppel by. *Long*, 7 A. 461, 67 S. E. 124; *Beck*, 127/95, 56 S. E. 242; *American Mills Co.*, 20 A. 34, 92 S. E. 760; *Powell*, 145/704, 89 S. E. 753, L. R. A. 1917A, 306. See *Carrie*, 145/184, 188, 88 S. E. 949. Statement in return of guardian was not, of surety. *Rich*, 126/466, 55 S. E. 336.

Allegations withdrawn by amendment not used as estoppel. *Mims*, 135/244, 69 S. E. 824. Allegation as

to amount of claim did not prevent amendment increasing it, when. *Wilson*, 22 A. 86, 95 S. E. 317. Allegation that under facts pleaded plaintiff is entitled to recover a certain amount, not prevent amendment claiming more on the same facts. *Huger*, 126/684, 56 S. E. 64. Admission in *judicio*, and agreements of counsel, under mistake, effect of. *Commercial Assurance Co.*, 130/191, 196, 60 S. E. 554.

Agent, estoppel to deny that person who traded horse was. *Davis*, 12 A. 65, 76 S. E. 766.

One holding out another as, estopped to deny agency. *Fitzgerald*, 3 A. 212, 59 S. E. 713.

To receive payment, when no estoppel to deny that person was. *Bank of University*, 101/112, 28 S. E. 168.

Implied by estoppel; what must appear. *Bank*, 101/112, 28 S. E. 168.

By misrepresentations for his principal, estops himself individually. *Crosby*, 108/126, 33 S. E. 913.

Authority of, estoppel to deny. *German Co.*, 14 A. 88, 80 S. E. 302; *Seaboard Air Line Ry.* 14 A. 94, 80 S. E. 211; *Diamond Power Specialty Co.*, 11 A. 534, 75 S. E. 903; *Blakely Artesian Ice Co.*, 13 A. 574, 581, 79 S. E. 526.

Estoppel to deny, raised by suing on check given as part of his contract of accord and satisfaction. *Byrd Printing Co.*, 135/865, 869, 70 S. E. 798, 22 Ann. Cas. 182.

Authority of, facts not creating estoppel to deny. *McMichen*, 10 A. 506, 73 S. E. 691.

Conduct or statement of, not within scope of authority; not estop principal. *Williams Wagon Co.*, 19 A. 600, 602, 91 S. E. 920.

Violation of principal's instructions, when not set up by one with whom agent contracted. *Hanesley*, 103/279, 29 S. E. 928. See catchword, *Benefit*.

Allegations of facts from which estoppel might arise against the pleader, when no cause for demurrer. *Grant*, 117/189, 43 S. E. 401.

Amendment made to prevent dismissal, plaintiff not thereafter heard to say it was unnecessary. *Waller*, 132/833, 64 S. E. 1096; *Farrer*, 144/553, 87 S. E. 777; *Barley*, 149/605, 101 S. E. 680.

Of second suit in renewal, when not prevented by contradictory allegation in declaration first filed. *Sav. R. Co.*, 116/297, 42 S. E. 525.

Unnecessary, not allowed to be set up by him who offered it to meet objection. *Hamer*, 110/300, 34 S. E. 1001.

Amount of claim, admission as to. *Wilson*, 22 A. 86, 95 S. E. 317.

Appearance voluntarily entered to suit in other State, defendant not afterward heard to deny jurisdiction of his person. *Epps*, 104/702, 30 S. E. 959.

Appearing and objecting to order, without being made party, did not estop plaintiff from attacking excessive levy. *Williamson*, 101/276, 28 S. E. 846, 65 A. S. R. 302.

Application of payments, right of debtor by account and secured note to direct, not estopped by taking receipts "on account." *Massengale*, 108/762, 33 S. E. 72.

Argument, counsel's statement in, when no estoppel of client as to contrary contention. *Baker*, 127/650, 57 S. E. 62.

Assessment for street improvement; when landowner estopped to complain of apportionment. *Bacon*, 105/62, 31 S. E. 127.

Irregularities, facts raising estoppel against complaint of. Jurisdiction not lost. *Burns*, 148/549, 97 S. E. 536, affirming 22 A. 381, 96 S. E. 11. See catchword "Street," *infra*.

Assignment of contract by sublessee; when lessee not heard to set up that it was without his assent. *Hamby*, 127/792, 56 S. E. 1033.

Of property in fraud of his creditors, estoppel by, not extended to them in garnishment against assignee. *Jaques & Tinsley Co.*, 131/6, 62 S. E.

Attesting deed of another estops true owner who knows its contents. *Equi-*

table Loan Co., 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

Attorney as party claiming title not estopped by having signed, as counsel, petition in former case. *Stewart*, 135/112, 68 S. E. 1037.

Admission of, and abandonment of cause, no estoppel of client. *Empire Insurance Co.*, 140/142, 78 S. E. 935.

Answer of, to question of opposing counsel, touching renewal of dismissed suit, estoppel by. *McDaniel*, 134/189, 67 S. E. 668.

Assurances and conduct of, may create, against setting up defense arising on contract. *American Insurance Co.*, 135/118, 68 S. E. 1026.

Authority of, to represent party, facts estopping party from denying such authority. *Harrell*, 14 A. 171, 80 S. E. 534.

Auditor's report, estoppel of objection to, by consent and proceeding to hearing. *Hale*, 133/631, 66 S. E. 781.

Award under statutory proceeding not conclusive of original cause, where not entered as judgment of court. *Train*, 144/624, 87 S. E. 1072.

Bailee estopped to deny bailor's title, or assert illegality of bailment. *Pepper*, 7 A. 521, 67 S. E. 218.

Bank director making contract to secure bank's obligations cannot object that contract is not authorized by two thirds vote of stockholders; nor can his surety. *Amos*, 22 A. 349, 95 S. E. 1025.

Bankrupt estopped, by waiver, to claim exemption. *Bell*, 120/628, 48 S. E. 150.

Bankruptcy, proof of claim in, invites application of doctrine of estoppel to what extent. *McBride*, 148/380, 383, 96 S. E. 1004.

Benefit, acceptance of, ground for estoppel. *Citizens Bank*, 15 A. 777, 84 S. E. 157. See *G. S. & F. R. Co.*, 15 A. 831, 836, 84 S. E. 323; *A. C. L. R. Co.*, 15 A. 842, 84 S. E. 316; *Swearingen*, 19 A. 658, 91 S. E. 1050.

Received by corporation estopped it from denying that the transfer of a note as collateral security for its debt

was authorized. *Wallis*, 16 A. 804, 805, 86 S. E. 391.

Precluding denial of authority of agent. *Clyde*, 22 A. 192, 95 S. E. 734; *Dillon*, 22 A. 209; 95 S. E. 733; *Dorris*, 22 A. 516, 96 S. E. 450; *Coursey*, 22 A. 538, 96 S. E. 397.

Taken under award, party estopped from attacking it. *Harrell*, 125/379, 54 S. E. 116.

From voidable contract, effect of. *Watkins*, 23 A. 181, 98 S. E. 94.

Under forthcoming bond, estopped maker from attacking it as invalid. *Hatton*, 1 A. 747, 57 S. E. 1044.

Bill of lading indorsed in blank held by broker, his pledgee bona fide and without notice prevails in suit by his principal. *Com. Bank*, 120/74, 47 S. E. 589, 65 L. R. A. 443. Cf. *Savannah Bank & Co.*, 149/302, 100 S. E. 33.

Recitals, estoppel to deny. *A. C. L. R. Co.*, 20 A. 764, 93 S. E. 286.

Recitals in, when conclusive, after transfer. *L. & N. R. Co.*, 8 A. 81, 68 S. E. 617.

Not estop holder from taking mortgage on same property. *Heard*, 17 A. 34, 86 S. E. 260.

Bona fide purchaser for value and without notice, when estoppel was not operative against. *Coursey*, 141/66, 80 S. E. 462. Burden of proof that defendant was affected by estoppel in pais. *Ib.*

When estoppel in pais was not operative against. *Thornton*, 133/725, 67 S. E. 97, 134 Am. St. R. 226.

Bond, approval of, no estoppel against requiring officer to give bond with penalty required by statute. *Tarver*, 147/19, 92 S. E. 532.

By defendant in attachment, payable to plaintiff as partnership, estopped defendant from setting up that the affidavit for attachment was by an individual as plaintiff. *Busby*, 22 A. 95 S. E. 1014.

Estoppel to deny validity of bond under which substantial benefit was obtained. *Paxson*, 20 A. 267, 92 S. E. 1023.

For delivery of property, extent of estoppel by recitals in. *Mullis*, 143/618, 620, 85 S. E. 845.

For forthcoming of property in trover case, not estop maker from denying that he ever had possession of the property. *Bell*, 111/668, 36 S. E. 904.

Forthcoming, giving of, estops maker and sureties from denying its validity or the fact of levy. *Smith*, 3 A. 419, 60 S. E. 199.

Not authorized by sealed instrument, binding after obtaining status in litigation. *Harris*, 144/211, 86 S. E. 1097.

Obligor securing advantage by, estopped from attacking it as invalid. *Alexander*, 10 A. 497, 73 S. E. 700.

Bond for title, acceptance of, by third person, from obligee, induced by conduct of obligor, no denial of genuineness allowed, nor proof of execution required. *Martin*, 102/72, 29 S. E. 132.

Acceptance of, did not estop plaintiff from asserting and showing true transaction. *Woodward*, 148/239, 96 S. E. 323.

Borrower (county official), when estopped to raise question as to validity of loan. *Board of Education*, 4 A. 640, 62 S. E. 154.

Boundary line between coterminous lands, when owner not afterward heard to deny assent to. *Bennett*, 146/473, 91 S. E. 553.

Recital of, in deed, estops grantor. *Schreck*, 131/489, 62 S. E. 705.

Brief of evidence agreed to as correct, no motion to dismiss below, such motion in Supreme Court too late. *Berg*, 104/587, 30 S. E. 744.

Building and loan borrower could not defend suit for debt on ground that by-law was violated in lending to him. *Reynolds*, 102/126, 29 S. E. 187.

Members not allowed to set up usury. *Cook*, 104/825, 30 S. E. 911.

Building, facts raised no estoppel to injunction against, within area restricted by deed. *Seawright*, 139/323, 77 S. E. 152.

No estoppel as to location of, by instrument here construed. *Smyth*, 135/96, 68 S. E. 1032.

Burden of proof on party setting up, as to matters involved and determined by judgment. *Harris*, 144/519, 87 S. E. 661.

Under plea of estoppel. *Parks*, 142/392, 83 S. E. 100; *Callaway*, 123/351, 51 S. E. 477.

By-law, estoppel of member of society to set up that it did not affect prior contract with him. Not raised here. *Supreme Council*, 117/811, 45 S. E. 33.

Cancellation of deed for fraud, etc., no estoppel against, though suit delayed until after death of grantee. *Lanfair*, 112/489, 37 S. E. 717.

Capacity to contract, estoppel to deny. *Petty*, 109/666, 35 S. E. 82.

Carrier estopped by bill of lading, as to quantity of goods; not so where qualifying words inserted. *Nashville Ry.*, 139/582, 77 S. E. 797.

Estopped by bill of lading, to assert that goods were damaged before accepted for shipment. *Central Ry. Co.*, 14 A. 743, 82 S. E. 310.

Estoppel of, to dispute consignor's title. *Atlantic Ry. Co.*, 124/482, 54 S. E. 530.

Estoppel of shipper by his declaration of value. *Southern Express Co.*, 134/451, 67 S. E. 944, 137 Am. St. R. 227; *Atlanta &c. R. Co.*, 145/708, 89 S. E. 817. *Ga. So. R. Co.*, 121/231, 48 S. E. 807.

Estoppel to deny right of shipper to recover damages on breach of contract. *Southern Ry. Co.*, 2 A. 37, 58 S. E. 333.

Change of theory in litigation, when not allowed. *Central Ry. Co.*, 9 A. 182, 70 S. E. 1021.

Charge to jury on, when no cause for new trial. *Chandler*, 132/847, 65 S. E. 128.

Charter forfeiture, when State precluded from, by grant of amendment, acted on by the corporation. *Alexander*, 113/209, 38 S. E. 772, 54 L. R. A. 305.

Citizen whose conduct induces city authorities to believe he will not question

validity of ordinance vacating street, not estopped from attacking it before definite action is taken under it by parties interested in giving it effect. **Coker**, 123/483, 51 S. E. 481.

City could not prosecute corporation's agent, after allowing it, without objection to make expensive outlay for business. **Paulk**, 104/27, 30 S. E. 417.

Claimant and surety on his forthcoming bond estopped, in suit thereon, from attacking legality of levy or officer's authority to make it. **Oliver**, 124/551, 53 S. E. 100, 4 L. R. A. (N. S.) 1020, 110 Am. St. R. 188.

Estopped, by his affidavit, from objecting to lack of description in entry of levy. **Shelton**, 134/683, 68 S. E. 481.

Estopped to deny levy was on defendant's property, by admission in claim affidavit. **Pharr**, 7 A. 262, 66 S. E. 618.

Inadmissibility of evidence to show estoppel against. **Stewart**, 135/112, 68 S. E. 1037.

Of exemption, when not estopped by former judgment. **Winkles**, 138/482, 75 S. E. 640.

Of land, agreeing to pay off asserted lien, not estopped from setting up title. **Equitable Loan Co.**, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

Of title by retention note, not estopped by dismissal of attachment sued out by mistake. **Malsby Co.**, 138/768, 76 S. E. 53.

When estopped to question sufficiency of description of property, legality of levy, etc., in suit on forthcoming bond. **O'Neill**, 127/640, 56 S. E. 739.

Estopped by decree adjudging against his title. **Walker**, 114/862, 40 S. E. 1010.

Estopped by having signed mortgage here. **Watson**, 132/154, 63 S. E. 912.

Claim, failure to file, on levy, when not estop true owner from asserting title in trover. **Lawless**, 122/276, 50 S. E. 85; **Campbell**, 23 A. 711, 99 S. E. 227.

Issue in, broadened by pleading and proving representations that forged

deed was genuine. **Roberts**, 101/765, 29 S. E. 271.

Of fund from sheriff's sale estopped claimant from asserting invalidity of sale. **Redwine**, 18 A. 77, 89 S. E. 163. See **Barnes**, 5 A. 162, 62 S. E. 994.

Of indebtedness, recital as to amount of, in agreement as to other matters, not estop creditor. **Wardlaw**, 13 A. 594, 79 S. E. 523.

Recital of levy, in affidavit and bond, effective as estoppel. **Weeks**, 23 A. 128, 97 S. E. 664.

Estoppel against, when raised. **Medlock**, 23 A. 711, 99 S. E. 227.

Unsuccessful, no estoppel against foreclosure of mortgage on same property. **Virginia-Carolina Chemical Co.**, 2 A. 375, 58 S. E. 502.

Clean hands, rule that party seeking equitable relief must have, applied to one invoking equitable estoppel. **Dees**, 128/267, 57 S. E. 427.

See **Equity**.

Composition by creditors with debtor; estoppel of creditor to recede from. **Stovall Co.**, 10 A. 498, 73 S. E. 761.

Conduct or statement inducing belief on which another has acted estops, when. **Am. Freehold Co.**, 119/341, 46 S. E. 426; **Ray**, 119/678, 46 S. E. 849.

Allegations and previous litigation resulting in estoppel by. **Bearden**, 101/169, 28 S. E. 678; **McCandless**, 101/180, 28 S. E. 663.

Condemnor's failure to make effort to procure land by contract, when landowner not heard to set up. **Atlanta Terra Cotta Co.**, 132/537, 64 S. E. 563.

Conduct effecting estoppel in pais must be acted on to detriment of party claiming benefit therefrom. **Hancock**, 133/734, 66 S. E. 949. Evidence did not show. **Becker**, 133/870, 67 S. E. 92.

Estopping beneficiaries of homestead from attacking judgment setting it apart. **Brooks**, 13 A. 270, 79 S. E. 160.

Not acted on, when no estoppel. **Su-song**, 126/436, 55 S. E. 236.

Of heirs, does not raise estoppel in favor of administrator's sureties. **Worthy**, 125/415, 54 S. E. 667.

Of plaintiff and other residents, touching violation of deed restrictions of buildings, did not estop. **Seawright**, 139/323, 77 S. E. 152.

On matters in pais, doctrine as to. **Elliott**, 102/120, 29 S. E. 155.

That did not mislead, and without intent to deceive, no estoppel by. **Piedmont Mills**, 131/129, 62 S. E. 52.

Consent: of devisees and legatees to continuing of partnership business by surviving partner, effect of. **Maynard**, 147/178, 93 S. E. 289, L. R. A. 1918A, 81.

To filing objections, no estoppel to deny here. **Jackson**, 110/812, 36 S. E. 234.

Consideration, estoppel to plead failure of. **Crooker**, 3 A. 192, 59 S. E. 722; **Liquid Co.**, 3 A. 372, 59 S. E. 1125; **Sheffield**, 3 A. 374, 59 S. E. 1113.

Immoral, of deed, prevented grantee from invoking equitable estoppel as against true owner who deceived him by leading him to believe the grantor had title. **Deen**, 128/265, 57 S. E. 427.

Of note, estoppel by statement to intending purchaser, to set up failure of. **Smith**, 111/228, 36 S. E. 649.

Of sealed instrument, whether maker estopped to set up want of. **House**, 125/644, 54 S. E. 735.

Recital as to, in deed, how far estops. **Jewell**, 109/246, 34 S. E. 337. See **Jenkins**, 109/35, 34 S. E. 355.

Contract, estoppel to deny. **Rozar**, 14 A. 13, 80 S. E. 24.

Estoppel to deny legality of. **Russell**, 14 A. 344, 80 S. E. 731.

Breach by letter; contradictory explanation of words therein not received. **George W. Muller Co.**, 145/484, 89 S. E. 615.

Different from that expressed in the writing, when no estoppel to set up, on representative of deceased party there-to who could not read. **Carpenter**, 116/678, 42 S. E. 1016.

For sale of goods not consummated because one party prevents an agreed

valuer from acting, no estoppel. **Elberton Co.**, 122/858, 50 S. E. 964.

Invalidity, municipal council not prevented from setting up. **Horkan**, 136/561, 71 S. E. 785. See **Macon Ry. Co.**, 136/797, 72 S. E. 159.

Of accord and satisfaction did not bind, where alleged agent's authority did not exist. **Morgan**, 141/329, 80 S. E. 996.

Of indorser of note treated by holder as one of suretyship, he cannot afterward treat it as one of guaranty. **Schlittler**, 3 A. 86, 59 S. E. 342.

Ultra vires, benefit received under, does not estop municipality from setting up invalidity. **Neal**, 142/205, 82 S. E. 546.

Work, acceptance and use of, knowing of non-compliance, how effective. **Bandy**, 138/516, 75 S. E. 626.

Conveyance of realty by another than owner, estoppel of owner by consent. **Parrott**, 105/97, 31 S. E. 417.

Corporation, and directors knowing, not heard to assert invalidity of transfer, where it received and used the money. **Bank**, 138/799, 76 S. E. 95.

By estoppel, defense of stockholders did not authorize continuing suit as against. **Venable**, 135/508, 69 S. E. 822, 32 L. R. A. (N. S.) 446.

Can not retain fruits of contract and successfully set up want of authority to make it. **Jones**, 134/557, 68 S. E. 303.

Estoppel of, by statement of officer as to amount of debt to. **Fulton B. & L. Asso.**, 103/376, 29 S. E. 932.

Estoppel to deny existence of. **Patterson**, 8 A. 667, 70 S. E. 75; **Brooke**, 129/696, 59 S. E. 769; **Edenfield**, 7 A. 645, 67 S. E. 896; **Rozar**, 14 A. 13, 80 S. E. 24; **Dorris**, 22 A. 514, 96 S. E. 450.

Existence of, or capacity to do business, estoppel to deny. **Petty**, 109/674, 35 S. E. 82.

Estoppel to deny existence of, by dealing with corporation as such. **Collins**, 121/515, 49 S. E. 594; **Orr**, 6 A. 417, 65 S. E. 164.

Estoppel to deny existence or powers of. **Brown**, 113/467, 39 S. E. 71.

Plaintiff cannot deny existence of, who sues defendant as a corporation. **Richmond County**, 141/458, 81 S. E. 232; **Etowah Co.**, 116/406, 42 S. E. 709. Corporation not estopped to deny jurisdiction of suit against it in court that granted its charter. *Ib.* 410.

Estoppel of stock subscriber as to creditors of, not extended to director who gave credit. **Lowe**, 148/388, 96 S. E. 1001.

When estopped to set up that a contract was ultra vires. **Savannah Ice Co.**, 12 A. 818, 79 S. E. 45.

When estopped to raise issue of want of power, by acquiescence in acts of officers. **Georgia Granite R. Co.**, 144/666, 87 S. E. 897.

Correction, failure to make, as to interpretation of language used. **Armour**, 6 A. 659, 65 S. E. 803.

Counter-claim, estoppel to set up, after giving note. **National Bank**, 10 A. 245, 246, 73 S. E. 418.

County, estoppel of, to set up invalidity of contract. **Milburn**, 109/478, 34 S. E. 848.

Commissioners, effect of acquiescence in selection of, by grand jury, law providing for popular election. **Brown**, 102/528, 29 S. E. 267.

Not estopped to complain of exercise of dominion over territory taken under void statute. **Worth County**, 139/117, 76 S. E. 747.

Sued in name of its commissioners, before 1877, and so litigating, can not object to judgment against it as void. **Conyers**, 116/105, 42 S. E. 419.

Treasurer could not deny that money unlawfully borrowed was held by virtue of his office. **Mason**, 104/35, 30 S. E. 513.

Course of dealing, binding force of. **Potts-Thompson Co.**, 135/452, 460, 69 S. E. 734.

May estop denial of payment. **Arnold**, 3 A. 686, 60 S. E. 470.

Court, estoppel to deny legal existence of. **Hightower**, 121/159, 48 S. E. 969.

Creation of; what essential. **Mason**, 3 A. 352, 60 S. E. 4.

Creditor holding lien on homestead, who acted as receiver in making sale and reinvestment, taking deed to himself, as trustee and receiver, etc., not estopped from enforcing his lien. **Johnson**, 120/531, 48 S. E. 137.

Not estopped to hold promoters liable, by having accepted partial payments of corporation and by prosecution of suit against it. **Wells**, 143/732, 85 S. E. 873.

Of person estopped, when not bound. **Equitable Loan Co.**, 124/190, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

Seeking to subject homestead property was estopped by prior judgment, on facts here stated. **Lancaster**, 139/376, 77 S. E. 381.

Silence of, as to his lien on property excepted from agreement with another creditor in regard to purchase and division of debtor's assets, not an estoppel under facts here. **Bank of Lumpkin**, 20 A. 1, 92 S. E. 778.

Statement by, of amount of his debt, to agent of insurance company that issued policies assigned to him, when no estoppel as to another creditor of the insured. **Atlanta Bank**, 122/692, 51 S. E. 38.

Statement on part of, to third person, as to amount of debt to, when binding. **Fulton B. & L. Asso.**, 103/376, 29 S. E. 932.

Criminal prosecution, agreement to suppress, for a consideration, both illegal and immoral. Action and defense by wife, when no estoppel against. **Taylor**, 112/332, 37 S. E. 408; **Jones**, 112/426, 37 S. E. 729, 52 L. R. A. 271.

Damages, matters that wrong-doer may not set up in mitigation of. **Nashville R. Co.**, 120/455, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. Cas. 210.

Debtor was not estopped to set up that rights of creditors under security deed could not be separately enforced, under the facts. **Strickland**, 141/573, 81 S. E. 886.

Declaration of adversary, partly unfavorable to party introducing it; he was not estopped from contradicting that part. *Stallings*, 22 A. 600, 96 S. E. 708.

Decree or judgment offered as, not admissible without complete and duly authenticated copy of record. *Williams*, 118/296, 45 S. E. 282.

In vacation, parties not heard to assert invalidity of, under facts recited. *Jones*, 141/728, 82 S. E. 451.

Dedication, estoppel against withdrawal of. *McCoy*, 131/381, 62 S. E. 297.

Estoppel by offer of, to deny power to make it. *Jacobs' Pharmacy Co.*, 143/457, 85 S. E. 332, Ann. Cas. 1917A, 1105.

Estoppel to assert right inconsistent with public easement. *Brown*, 148/85, 95 S. E. 962.

Estoppel of original owner and grantees from setting up claim adverse to. *East Atlanta Land Co.*, 138/381, 75 S. E. 418.

Deed, estoppel from. *McDonald*, 117/122, 43 S. E. 422. Effect of recitals in. *Grant*, 117/188, 43 S. E. 401; *Mays*, 117/814, 45 S. E. 68. Estoppel by recitals in. *E. Tris Napier Co.*, 147/9, 92 S. E. 650; *Willingham*, 106/71, 31 S. E. 799.

Approval written by wife on husband's, not estop her from setting up that it was void for usury. *Cade*, 109/292, 34 S. E. 566.

Conveying land and right to overflow above dam, no obstacle to recovery of damages for detaining water from grantor's mill below dam. *High Shoals Mfg. Co.*, 136/23, 70 S. E. 641.

Describing located alley as one boundary, grantor can not close the alley without consent of grantee. *Gibson*, 143/100, 84 S. E. 373.

Estoppel by, to claim title. *McLean*, 148/114, 95 S. E. 985.

Estoppel by, with knowledge of facts. *Parks*, 137/578, 73 S. E. 839.

Estoppel of grantee and his privy. *King*, 144/319, 87 S. E. 22.

Facts did not raise estoppel by, against claimant in this case. *Lewman*,

132/485, 64 S. E. 544. Nor as against defendant here. *Tarver*, 132/798, 65 S. E. 177, 24 L. R. A. (N. S.) 1161. Grantee estopped by, only from proving other title; not as to interest of one of two grantors. *Taylor*, 133/387, 65 S. E. 850.

Grantee in, may be estopped to assert title, by his conduct and words. *Smith*, 127/483, 56 S. E. 640.

Grantee in, not heard to allege that instrument was mortgage not passing title. *McCandless*, 101/180, 28 S. E. 663.

Grantee in older, not estopped as to younger, by having used it to defeat former action of grantor. *Burtchael*, 143/31, 84 S. E. 55.

Grantee not bound by recitals in, if he did not accept it. *Cox*, 142/488, 83 S. E. 115.

Grantor estopped by, to deny that street or alley is such, when given as a boundary. *Wimpey*, 137/328, 73 S. E. 586.

Improperly delivered, estoppel of grantor, as against bona fide purchaser from grantee. *Mays*, 117/814, 45 S. E. 68.

Made as executor, estopped maker from setting up individual title. *Callaway*, 123/350, 51 S. E. 477.

Minors not estopped by. *Jones*, 137/681, 74 S. E. 51.

On immoral and illegal consideration concludes wife of grantor. *Beard*, 120/1019, 48 S. E. 400.

Procured by fraud; vendee could not, without intervening equity or estoppel, defend on ground of laches. *Manning*, 135/597, 69 S. E. 1126.

Recital in, not extended beyond specific statement of fact. *Toland*, 144/236, 86 S. E. 1089. General rule and exception. *Thrower*, 144/372, 87 S. E. 301.

Grantor not estopped by, from proving consideration different from that expressed. *L. & N. R. Co.*, 133/21, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860; *Bashinski*, 133/41, 65 S. E. 152. Where children joined in conveyance of land set apart

to widow. **Hancock**, 133/734, 66 S. E. 949.

Recital in, when did not estop grantee from disputing validity of will. **Janes**, 110/627, 36 S. E. 69.

Recitals in, when not estop. **Janes**, 123/46, 50 S. E. 954; **Hester**, 128/534, 58 S. E. 165.

Recorded, grantor estopped from insisting that his possession, never surrendered, is notice of mistake in conveying more land than intended. **Mallette**, 120/742, 48 S. E. 229.

Reservation in, estops grantee as to grantor and his privies, where no notice of adverse holding. **Houser**, 108/469, 34 S. E. 126.

Was not admissible to show estoppel. **Murrelle**, 142/41, 82 S. E. 456.

When holder of, as security for debt, could not deny its character. **McCandless**, 101/180, 28 S. E. 663.

When maker not estopped to assert invalidity of. **Wacasia**, 142/113, 82 S. E. 442.

When not estop as to after-acquired title. **Baxter**, 126/362, 54 S. E. 1036.

Widow who sells land set apart as year's support, not estopped by, if sale made to pay decedent's debts. **Gibbs**, 136/261, 71 S. E. 136.

Defects, buyer not estopped from pleading failure of consideration because of, to note given on promise to repair. **Alpine Safe & Lock Co.**, 13 A. 154, 78 S. E. 1023.

Defendant in fi. fa., who accepted overplus of sale under levy, when not entitled to have judgment set aside. **Lupo**, 130/410, 60 S. E. 1003.

Delay in performing contract procured by oral request; no advantage to be taken. **Small Co.**, 137/566, 73 S. E. 846.

In suit by carrier for deficiency in freight rate collected, not estop. **Central Ry. Co.**, 14 A. 302, 80 S. E. 725.

Of objection until after construction of waterworks, ground for refusing to enjoin use of water. **City of Elberton**, 123/1, 50 S. E. 977.

Delivery of deed, estoppel to deny, as against third persons, where grantor

had it recorded. **Eq. Mortgage Co.**, 195/555, 31 S. E. 359.

Of escrow improperly; ratification. **Dixon**, 102/468, 31 S. E. 96.

Of note, estoppel to deny. **Atlanta National Bank**, 21 A. 625, 627, 94 S. E. 853.

Demurrer, estoppel by failure to except to ruling on. **Richmond Hosiery Mills**, 123/216, 51 S. E. 290; **Sims**, 123/643, 51 S. E. 573; **Cross**, 123/820, 51 S. E. 704.

On the ground that another form of remedy was the proper one, sustained, party estopped from objecting to that remedy. **Neal**, 121/500, 49 S. E. 618. See **Butler**, 121/817, 49 S. E. 763.

Sustained, estoppel of demurrant to take position inconsistent with. **Central Ry. Co.**, 9 A. 182, 70 S. E. 1021. **Devise in separate item of will**, no estoppel against attack on, from accepting money in lieu of dower and year's support, and of income as tenant for life. **Trustees**, 141/891, 81 S. E. 238.

Devisee's assent to terms of will, no estoppel here. **Harrison**, 105/519, 31 S. E. 455.

Disability, estoppel to set up, after having appeared in court and received benefit of judgment. **Jones**, 123/282, 51 S. E. 349.

Disclaimer of title as. **Sanford**, 114/1012, 41 S. E. 668.

Dismissal of affidavit of illegality, for want of prosecution, not adjudication on merits. **Kinney**, 14 A. 181, 80 S. E. 663.

Of bail-trover proceeding, estoppel by. **Trammell**, 8 A. 501, 69 S. E. 921.

Of writ of error, on statement of counsel for defendant in error, that the judgment excepted to was satisfied, estops subsequent enforcement of the judgment. **Canady**, 5 A. 365, 63 S. E. 142.

Disqualification of judge, consent to order for him to try case in vacation estops question of. **Buena Vista Bank**, 114/398, 40 S. E. 284.

Distraint; defendant who replevies the property estopped from withdrawing

counter-affidavit. **Smith**, 136/439, 71 S. E. 741.

Distribution of estate according to void will, agreement as to, when binding. **Gay**, 101/601, 28 S. E. 1019.

Division of partnership property, when not estop denial of title to part received. **Huger**, 126/684, 56 S. E. 64.

Divorce, libellant for, not heard to say no suit was pending; though no waiver as to jurisdiction permits suit in county not of defendant's residence. **Odum**, 132/439, 64 S. E. 470.

Duress, no estoppel against avoidance of deed procured by. **Jordan**, 143/143, 146, 84 S. E. 549, L. R. A. 1915D, 1122.

Ejectment; plea and evidence of estoppel. **Fletcher**, 134/368, 67 S. E. 1034.

To take under will, in ignorance of deed by testator, not such as to estop adverse claim. **Shewmake**, 148/287, 96 S. E. 564.

To treat obligation as a debt, by taking judgment, barred claim of equitable interest on implied trust. **McGarity**, 148/146, 95 S. E. 968.

Election, estoppel of voter participating in. **Tolbert**, 143/295, 67 S. E. 826. 137 Am. St. R. 222. No estoppel by conduct here. **DuPre**, 134/317, 67 S. E. 876; **Landsdell**, 134/536, 537, 68 S. E. 102.

Election of remedy, by inconsistent claim. **Mitchell**, 5 A. 314, 62 S. E. 731; **Barnes**, 5 A. 162, 62 S. E. 994; **Redwine**, 18 A. 77, 89 S. E. 163.

Estoppel by. **Worthy**, 125/415, 54 S. E. 667; **Barbee**, 22 A. 729, 730, 97 S. E. 197.

Rescission as bar to suit for damages. **Bacon**, 117/207, 43 S. E. 482.

Doctrine of, not applied, where foreclosure was based on void mortgage clause in purchase-money note in which title was reserved in vendor. **Bacon**, 19 A. 69, 90 S. E. 1033.

Erroneously required, compliance with, prevents complaint. **Morris**, 114/935, 41 S. E. 56.

Estoppel by. Claim of lien on proceeds of judicial sale prevents recovery. II—39.

ery in trover against purchaser thereat. **James**, 3 A. 357, 59 S. E. 1118. Same effect by suing out attachment. **Rowe**, 3 A. 504, 60 S. E. 275.

Proceeding against attorney for money collected in compromise precluded claim for damages on ground that compromise was unauthorized. **Ewing**, 103/812, 30 S. E. 637.

Equal means of obtaining knowledge, when prevents assertion of. **Peyton**, 130/338, 60 S. E. 563, 124 Am. St. R. 170.

Equitable estoppel, facts making no case of. **Piedmont Mills**, 131/130, 62 S. E. 52; **Hutcheson**, 131/268, 62 S. E. 189; **Potts**, 131/203, 62 S. E. 77; **Kinderland**, 131/456, 62 S. E. 582. Compare **Town of Pelham**, 131/325, 62 S. E. 186; **Turner**, 131/445, 62 S. E. 587.

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May be urged on trial of claim case, without special pleading. **Askew**, 147/613, 95 S. E. 5.

Origin and purpose of. Discussion of the doctrine. **Equitable Loan Co.**, 124/190, 199, 52 S. E. 559, 3 L. R. A. (N. S.) 879.

What is. **Wilkins**, 113/50, 38 S. E. 374, 84 Am. St. R. 204.

Equitable title of wife, estoppel to assert, against creditor of husband, when raised. **Ford**, 140/670, 79 S. E. 576.

Error induced by party, no ground for exception by him. **Gaskins**, 12 A. 97, 76 S. E. 777; **Empire Life Ins. Co.**, 12 A. 380, 77 S. E. 209; **Realty Co.**, 4 A. 402, 61 S. E. 832; **Chatman**, 6 A. 564, 65 S. E. 360.

Estoppel to complain of, where counsel was silent when court asked question and opposing counsel answered. **Powell**, 9 A. 617, 71 S. E. 1013.

Induced by counsel for accused, not ground for new trial. **Threlkeld**, 128/660, 58 S. E. 49. See **Polk**, 148/34, 95 S. E. 988; cf. **Hill**, 147/650, 95 S. E. 213.

Essentials of estoppel. **Sou. Mfg. Co.**, 13 A. 848, 81 S. E. 263.

Of estoppel as to harm to party in being misled, relying on representation or conduct, changing status, etc.; necessary allegations. *Delaware Ins. Co.*, 126/381, 55 S. E. 330, 7 Ann. Cas. 1134.

Of estoppel by conduct. *Tinsley*, 105/290, 31 S. E. 174; *Kennedy*, 6 A. 817, 66 S. E. 29.

Evidence conflicting as to estoppel, finding stands. *Featherston Co.*, 118/564, 45 S. E. 414.

Estoppel of party introducing; inaccurate charge to jury as to. *Holli-day*, 10 A. 711, 715, 74 S. E. 67.

Extrinsic, when admissible in support of plea of estopped by judgment. *Irvin*, 127/240, 55 S. E. 1037, 9 Ann. Cas. 341.

Relevant, of stipulation at time of receipt of money, as to limitation of effect of such receipt. *Moore*, 116/28, 42 S. E. 258.

To show estoppel, when not received under plea of novation. *Trentham*, 118/530, 45 S. E. 421.

Treated as before the court after amendment, though objection had been sustained, party estopped from contending that it should be suppressed from record. *Niagara Co.*, 1 A. 603, 57 S. E. 1018.

Exceptor estopped from asserting that there was no such evidence as that on the admission of which his exception is based. *Beck*, 127/94, 56 S. E. 242.

Execution sale, validity of, not subject to attack by one who was present, assisting bidder, etc. *Crump*, 140/318, 78 S. E. 1066.

Executor, when not estoppel by his allegations or admissions in a judicial proceeding. *Harris*, 133/104, 65 S. E. 250.

Executory devisees, who did not take as heirs of their mother, were not estopped by her act. *Murrelle*, 142/41, 82 S. E. 456.

Facts did not raise. Position not changed as to party alleging. *Harris*, 142/297, 82 S. E. 902.

Not unequivocally showing estoppel in pais, jury determines, not judge. *Tune*, 131/528, 62 S. E. 976.

False pretenses; knowledge of law not imputed to prosecutor to shield cheat and swindler. *Ryan*, 104/83, 30 S. E. 678.

Favored, by judgment; not favored, by admissions, recitals, etc. *Missouri Ins. Co.*, 1 A. 448, 58 S. E. 93.

Fertilizer note renewed after crops had failed; effect on defenses thereto. *Montfort*, 108/12, 33 S. E. 636.

When seller of, was estopped to set up that samples were not legally taken. *Morgan*, 110/787, 36 S. E. 219.

Fiduciary capacity of defendant alleged, plaintiff not heard to deny that relation. *Sudderth*, 144/496, 87 S. E. 656.

Forfeiture of insurance, estoppel of insurer to claim, under facts here. *Metro-politan Insurance Co.*, 134/166, 176, 67 S. E. 393; *Athens Mutual Ins. Co.*, 134/500, 68 S. E. 91. See *McDaniel*, 134/189, 67 S. E. 668.

Of insurance, estoppel to claim, by taking renewal of note for unpaid premium. *Neal*, 124/510, 52 S. E. 622.

Forgery; issue not so enlarged as to decide question of estoppel. *Roberts*, 101/765, 29 S. E. 271.

Fraud, effect of failure to make prompt offer to rescind for. *Page*, 106/80, 31 S. E. 804; *Eskridge*, 106/587, 32 S. E. 635.

In procurement of insurance policy, what conduct prevents denial of validity on account of. *German Am. Life Assn.*, 102/720, 29 S. E. 615.

Frauds, statute of; plea not hindered by admission of contract. *Douglass*, 110/165, 35 S. E. 339.

Fraudulent conveyance as to creditors. grantor in, cannot enforce covinous contract made with his grantee by having property applied to grantor's benefit. *Glover*, 132/796, 65 S. E. 64.

Garnishee could not attack defective service and his own oral answer on which judgment went against him. *Dooly*, 101/797, 29 S. E. 118.

Gifts of rights of way estopped owners from recovering damages to land by grading, cuts, etc. **L. & N. R. Co.**, 132/174, 63 S. E. 898; **S. A. L. Ry.**, 132/185, 63 S. E. 1098.

Grantee of widow not allowed to attack description of land in appraisers' return as too vague, etc. **Galloway**, 135/710, 70 S. E. 589.

Guardian and sureties, when not heard to set up that his appointment was not authorized by law. **Griffin**, 122/106, 49 S. E. 827.

Of minor heirs received part of proceeds of voidable sale; when no estoppel. **Broadhurst**, 137/834, 74 S. E. 422.

Unauthorized investment by, claimed by ward, ratification resulted, and ward precluded from denying vendor's right to proceed against property for balance due. **Howard**, 105/412, 31 S. E. 562.

Heirs (remaindermen) not allowed, after receiving proceeds of illegal sale of land by executrix (life-tenant), to repudiate it and recover the land. **Glore**, 124/923, 928, 53 S. E. 690.

Erroneous instructions to jury as to estoppel of heirs and legatees, to recover land. **Walton**, 144/45, 85 S. E. 1054.

Having obtained judgment based in part on proceeds of sale by administrator, estopped to attack sale as invalid. **Battle**, 116/218, 42 S. E. 347.

Sui juris, could not attack probate for want of jurisdiction, where they consented thereto. **Deveney**, 110/59, 35 S. E. 268.

Not estopped from asserting title to land, by administrator receiving proceeds of sale, or by their not objecting to improvements on dower estate. **Green**, 145/241, 88 S. E. 976.

Ratified irregular conveyance by administrator, by receiving proceeds of the sale. **Bowen**, 144/1, 85 S. E. 1007. Heir's suit for share taken and managed without administration, not defeated by setting up that right to recover is in legal representative of the estate. **Tensley**, 110/506, 35 S. E.

782, 78 Am. St. R. 113. Heir estopped from claiming interest, by instrument he signed, containing no words of conveyance. **Allen**, 146/204, 91 S. E. 22. Heir of devisee who kept land devised, when not heard to dispute validity of will not legally executed. **Banks**, 137/34, 72 S. E. 240. Heir who receipted for legacy, or by deed recognized validity of will, could not attack it or its probate. **Medlock**, 102/212, 29 S. E. 185.

Homestead application of head of family, dismissal of, when no estoppel to later application of his wife. **Mozley**, 124/376, 52 S. E. 443.

Application would not necessarily estop applicant from otherwise claiming the property. **Clements**, 106/449, 32 S. E. 584.

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Beneficiaries not estopped by their mortgage, by omission to contest foreclosure, or by partition. **Yates**, 147/335, 94 S. E. 465.

Claimant not estopped by prior representation, etc. **Stallings**, 110/879, 36 S. E. 227.

Right concluded by judgment in claim case. **Cosnahan**, 108/237, 33 S. E. 847.

Set up in defense to foreclosure of mortgage containing waiver thereof. **Ach**, 118/105, 44 S. E. 870.

Ignorance and want of convenient means to acquire knowledge, when essential to. **Tune**, 131/528, 62 S. E. 976; **Stonecipher**, 131/688, 63 S. E. 215, 127 Am. St. R. 248.

Of facts by person invoking, essential to. **Equitable Mortgage Co.**, 105/562, 31 S. E. 395.

Illegality of consideration, defendant allowed to set up, not to aid him, but to uphold mandate of law. **Dicks**, 132/605, 64 S. E. 788, 16 Ann. Cas. 1070.

Of contract, maker estopped from asserting, as against transferee, when. **Russell**, 14 A. 344, 80 S. E. 731.

Improvements, estoppel by acquiescence in. *Perkins Lumber Co.*, 117/441, 43 S. E. 692.

Made without claim of ownership or interest will not raise. *Roberts*, 112/146, 148, 37 S. E. 179.

Inconsistent actions; trover not maintained where contract asserted by lien foreclosure, and vice versa. *Purdy*, 142/308, 309, 82 S. E. 887, 888.

Inconsistent positions in litigation, when not allowed. *Realty Co.*, 4 A. 402, 61 S. E. 832; *Southland Mills*, 4 A. 754, 62 S. E. 532; *Albany Phosphate Co.*, 4 A. 771, 62 S. E. 533; *Thompson*, 6 A. 83, 64 S. E. 336; *L. & N. R. Co.*, 8 A. 82, 83, 68 S. E. 617; *Haber-Blum-Bloch Co.*, 5 A. 123, 62 S. E. 712; *Mitchell*, 5 A. 134, 62 S. E. 731; *Barnes*, 5 A. 162, 62 S. E. 994; *Mance*, 5 A. 229, 62 S. E. 1053; *Statham*, 5 A. 357, 63 S. E. 250; *Canady*, 5 A. 365, 63 S. E. 142; *Ederheimer*, 11 A. 486, 75 S. E. 828; *Council*, 11 A. 823, 76 S. E. 603; *Register*, 12 A. 1, 688, 76 S. E. 649; 78 S. E. 142; *Town of Climax*, 12 A. 145, 76 S. E. 994; *Surrency*, 13 A. 180, 78 S. E. 1013; *Kerr*, 13 A. 513, 79 S. E. 381; *Darsey*, 17 A. 280, 86 S. E. 781; *Redwine*, 18 A. 77, 89 S. E. 163; *Bacon*, 19 A. 69, 90 S. E. 1033; *Wilson*, 19 A. 159, 91 S. E. 233; *Ray*, 21 A. 541, 94 S. E. 899; *First National Bank*, 21 A. 608, 610, 94 S. E. 837; *Mayor &c. of Savannah*, 22 A. 190, 285, 95 S. E. 731; 96 S. E. 500; *Gentry*, 109/172, 34 S. E. 349; *Butler*, 121/817, 49 S. E. 763; *McDonald*, 23 A. 562, 99 S. E. 54.

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Individual and representative capacities, distinction. *Wagnon*, 104/434, 30 S. E. 895; *Coker*, 104/485, 31 S. E. 411.

Indulgence granted by payee of note at request of maker, not estop defenses, where it did not place payee in a worse position. *Pearson*, 105/803, 31 S. E. 746.

Injunction against illegal tax, conduct of taxpayer raising estoppel as to. *Burkhart*, 137/367, 73 S. E. 583.

Injury, as condition of estoppel. *Evans*, 111/105, 36 S. E. 426; *Grant*, 117/190, 43 S. E. 401.

To creditor by his failing to sue one and suing another because the latter admitted liability, evidence as to, as showing estoppel. *Wolff*, 105/153, 31 S. E. 425.

Innocent person putting in power of another to inflict injury; doctrine as to when one of two innocent persons must suffer, applied. *Hancock*, 17 A. 170, 184, 86 S. E. 434.

In pais affects only existing rights. *Alaculay Lumber Co.*, 134/603, 68 S. E. 427.

Insanity set up on motion for new trial, no bar to inquisition under Penal Code. *Sears*, 112/382, 37 S. E. 443.

Insured could insist on application of C. C. 1895, § 2110, though he had received larger dividends by company having ignored it. *Word*, 112/585, 37 S. E. 897.

Estopped by policy stipulation from relying on agent's waiver of condition therein. *Thornton*, 116/122, 42 S. E. 287, 94 Am. St. R. 99. Not estopped by policy stipulation from relying on waiver of conditions thereof. Ruling in 116 Ga. criticised. *Johnson*, 123/407, 51 S. E. 339, 107 Am. St. R. 172.

Insurer estopped by acts and knowledge of agent through his clerk. *Atlas Assurance Co.*, 144/306, 87 S. E. 1.

Estoppel by agent's knowledge (through, his clerk), before writing policy, from setting up non-compliance with condition therein. *Springfield Ins. Co.*, 132/687, 64 S. E. 1074. Aliter as to change of title to property after policy issued. *Athens Ins. Co.*, 132/703, 64 S. E. 993.

May insist on forfeiture, though its agent had notice of violation of policy stipulation. *Lippman*, 108/392, 33 S. E. 897.

Could defend for failure to comply with policy stipulation, though its agent

had not objected to past practice in business. *Morris*, 106/462, 32 S. E. 59; *Morris*, 106/472, 33 S. E. 430.

May forfeit policy for not paying premium, though giving indulgence to other policyholders. *Haupt*, 110/149, 35 S. E. 342.

When not estopped to avoid policy for violation of its stipulations. *Farmers Asso.*, 112/264, 37 S. E. 427. See *Phenix Co.*, 112/766, 38 S. E. 67.

Estoppel to claim forfeiture, by demand for builder's estimate. *Scottish Union Ins. Co.*, 135/188, 68 S. E. 1097.

Estopped from claiming forfeiture, by knowledge of agent receiving application and delivering policy. *Atlanta Home Insurance Co.*, 136/592, 71 S. E. 902.

Estoppel of, by agent's knowledge at and before policy issued. *Supreme Lodge*, 138/770, 784, 76 S. E. 91. Compare *Rome Insurance Co.*, 138/592, 594, 75 S. E. 657.

Premium, when not estoppel by receiving. *Reliance Life Ins. Co.*, 23 A. 573, 99 S. E. 140.

Retention of premium, no estoppel against defense based on fraud in obtaining policy. *Wilkins*, 23 A. 193, 97 S. E. 879.

Not estopped to avoid policy, on violation by insured, by agent's knowledge and conduct. *Beasley*, 140/126, 78 S. E. 722.

May be estopped from denying that lapsed policy has been revived. *Rome Insurance Co.*, 142/253, 82 S. E. 641.

Retention of dues, as raising estoppel against forfeiture. Admissibility of evidence. *Sovereign Camp*, 143/559, 85 S. E. 827.

May be estopped from setting up fraud in obtaining policy, by not promptly moving to rescind contract. *Columbian Ins. Co.*, 146/267, 276, 91 S. E. 106.

Condition of policy not complied with; estoppel against setting up assent by insurer's agent. *Peoples Bank*, 146/514, 91 S. E. 684.

Estoppel, by actual or constructive notice to its agent, from insisting on forfeiture of policy for other outstanding insurance. *Insurance Company*, 3 A. 807, 61 S. E. 406.

Intention fixed and emphatically expressed may be changed within time allowed by law. *City of Elberton*, 130/501, 504, 61 S. E. 18.

Presumption of, from conduct, when not overcome by showing private purpose. *Alabama Con. Co.*, 131/371, 62 S. E. 160.

Jeopardy former, accused not heard to set up, on habeas corpus, where he procured arrest of judgment for defective indictment. *Hill*, 122/572, 50 S. E. 344.

Judge's authority to preside, when recognized by moving for new trial. *Baldwin*, 6 A. 529, 65 S. E. 335.

Judgment against executor individually, no estoppel as to, by pressing it against estate represented by him. *Harris*, 142/297, 82 S. E. 902.

Executor not estopped to assert invalidity, by allegations and admissions in his individual capacity. *Harris*, 133/104, 65 S. E. 250.

Illegal, by consent, may be attacked. *Maddox*, 1 A. 46, 57 S. E. 1062.

No estoppel by, as to collection of increase of salary by superior-court judge. *Hammond*, 136/313, 317, 71 S. E. 479, 38 L. R. A. (N. S.) 77.

No estoppel by, if no jurisdiction of subject-matter. *Dix*, 132/630, 64 S. E. 790. As to want of jurisdiction of person, see *Crawley*, 132/96, 63 S. E. 819; *Odum*, 132/439, 64 S. E. 470.

Of eviction against mother, not bind children living on the land with her and asserting an independent title as heirs at law of their father. *McSwain*, 129/176, 58 S. E. 655.

Of Supreme Court, no estoppel by, as to amended petition and different evidence. *Austin*, 3 A. 775, 61 S. E. 998.

On note retaining title, no bar to claim interposed, where no conveyance

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filed for levy. **Malsby**, 138/768, 76 S. E. 53.

Overruling certiorari, when no estoppel against affidavit of illegality of execution. **McDonald**, 143/553, 85 S. E. 861.

Person who sued in assumed or trade name not heard to deny validity of. **Clark**, 126/24, 54 S. E. 909.

As estoppel not so treated regarding title, where action involves only right of possession. **Vada Naval Stores Co.**, 148/681, 98 S. E. 79.

Recognized as valid, by entering appeal. **Vaughn**, 108/660, 34 S. E. 192.

Pleaded as estoppel; burden of proof that particular issue was necessarily or actually decided. What evidence admissible. **Draper**, 122/234, 50 S. E. 113, 69 L. R. A. 483, 2 Ann. Cas. 650.

Relied on as estoppel; burden of proof as to issues involved and determined. **Harris**, 144/519, 87 S. E. 661.

Rule as to estoppel by. **Spradlin**, 139/577, 77 S. E. 799.

Suffered by sheriff on his answer to garnishment, effect of, in later money rule. **Gravitt**, 141/674, 81 S. E. 1107.

To claim anything under, by disavowal and repudiation expressed to opposing party. **Anderson**, 147/455, 94 S. E. 574, L. R. A. 1918B, 894.

Void, not merely irregular; party participating in trial not estopped from attacking it by affidavit of illegality. **Mills**, 20 A. 806, 93 S. E. 535.

When no estoppel by, as to truth of ground on which annulment of marriage was decreed. **Luke**, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559.

Validating bonds concluded grounds of attack by citizens and taxpayers. **Holton**, 134/560, 68 S. E. 472, 31 L. R. A. (N. S.) 116, 20 Ann. Cas. 199; **McDaniel**, 134/189, 67 S. E. 668.

Validation of municipal bonds concludes what objections. **Farmer** 133/95, 65 S. E. 180

Offered as estoppel, must be accompanied by transcript of whole record. **Little Rock Co.**, 112/526, 37 S. E.

Judgment—(Continued).

743; **Weaver**, 138/101, 74 S. E. 835; **Kerchner**, 106/437, 32 S. E. 351; **Williams**, 118/296, 45 S. E. 282. Compare **Sav. R. Co.**, 118/746, 747, 45 S. E. 623.

As estoppel, effect of. **Taylor**, 131/416, 420, 62 S. E. 291; **Elwell**, 101/498, 28 S. E. 833.

Extent of estoppel by. **Ga. R. Co.**, 124/597, 53 S. E. 251.

Estoppel by, when avoided by assurances to third persons. **Moate**, 146/425, 91 S. E. 420.

Estopped plaintiff from making point omitted in prior motion to set aside. **Glover**, 137/684, 73 S. E. 1068, Ann. Cas. 1913B, 191.

Estoppel by, applies to the State. **Central Bank**, 139/54, 76 S. E. 587.

Estoppel by, on issue raised by affidavit of illegality. **Fletcher**, 132/520, 64 S. E. 558.

Facts showed no estoppel by, against plaintiff in error. **Fitzpatrick**, 134/529, 68 S. E. 102. See **Lane**, 134/621, 68 S. E. 469.

Jurisdiction, consent does not estop denial of. **Cutts**, 108/633, 34 S. E. 186. Aliter, party who invoked ruling could not deny the legal effect thereof. **Vaughn**, 108/661, 34 S. E. 192; **Oslin**, 108/804, 34 S. E. 168.

Of suit wanting, waiver by defendant binds purchasers from him after judgment. **Glennville Bank**, 146/127, 90 S. E. 958.

Question of, when concluded by judgment. **Pope**, 124/809, 53 S. E. 384, 110 Am. St. R. 197, 4 Ann. Cas. 551.

Want of, not maintained by plaintiff, as to cross-bill. **Ray**, 106/492, 32 S. E. 603.

When plaintiff could not object that city court had none, to entertain equitable defenses. **Ferris**, 103/544, 30 S. E. 353.

Knowledge, or convenient means of acquiring it, prevents claim of estoppel by conduct or declaration. **Wall**, 143/417, 85 S. E. 325.

Essential to estoppel. **Hawks**, 141/423, 81 S. E. 200; **Milner**, 143/818,

85 S. E. 1045, L. R. A. 1916B, 977; Long, 7 A. 460, 67 S. E. 123.

Essential to waiver; it may be actual or constructive. Wilful ignorance, no relief from waiver by. **Alabama Construction Co.**, 131/371, 62 S. E. 160.

Of facts, at time of issuing insurance policy and accepting premium, estopped insurer from setting up that they invalidated the policy. **Rome Ins. Co.**, 11 A. 539, 75 S. E. 894.

Of illegal order of sale and of sale under it, when not estop remaindermen from asserting title. **Smith**, 123/287, 51 S. E. 474, 107 Am. St. R. 85. **Laches**, as bar to relief. **Southern Tobacco Co.**, 11 A. 501, 75 S. E. 828; **Dill**, 118/210, 44 S. E. 989; **Holt**, 118/895, 45 S. E. 690.

As ground of estoppel against stockholder complaining of sale of corporate properties. **Bridges**, 136/251, 71 S. E. 161.

As ground of estoppel, evidence did not show, touching complaint of appropriating name. **Creswill**, 133/837, 849, 67 S. E. 188, 134 Am. St. R. 231, 18 Ann. Cas. 453.

In prosecuting suit, as affecting doctrine of lis pendens. Law of estoppel applied. **Tinsley**, 105/285, 31 S. E. 174.

Of suitor, as estoppel. **Bridger**, 126/832, 56 S. E. 97, 8 L. R. A. (N. S.) 463, 115 Am. St. R. 118.

Landlord's title not asserted, rule as to estoppel of tenant not applied. **Stanley**, 140/750, 753, 79 S. E. 842.

Estoppel of tenant, to dispute. **Cowart**, 22 A. 197, 95 S. E. 719.

Tenant can not dispute; aliter, defendant in distress warrant did not enter under plaintiff. **Hawkins**, 101/148, 28 S. E. 632.

Tenant and his vendee without notice are estopped to dispute. **Vada Naval Stores Co.**, 148/677, 98 S. E. 79. See catchword "Tenant," infra.

Leased building, effect of using, for purpose not within terms of restrictive covenant. **Asa G. Chandler Inc.**, 148/188, 192, 96 S. E. 226.

Legatees whose judgment against executors was satisfied could not rightly set up title by reversion. **Johnson**, 139/219, 77 S. E. 73.

Lessee not estopped where contract did not mutually bind. **Lynch**, 138/304, 305, 75 S. E. 158.

Levy, estoppel to attack. **Pharr**, 7 A. 262, 66 S. E. 618; **Pepper**, 7 A. 521, 67 S. E. 218.

Affiant in illegality may attack validity of, though he has given forthcoming bond. **Peeples**, 141/411, 81 S. E. 116, 51 L. R. A. (N. S.) 635; **Hartshorn**, 15 A. 167, 82 S. E. 805.

Facts raising estoppel against claim of identity of mules levied on. **Our Bank**, 145/385, 89 S. E. 365.

Under attachment, facts raising estoppel against defendant attacking validity of. **Sharp**, 145/171, 88 S. E. 929.

Under dormant fi. fa., notice of did not estop defendant from attacking. **Davis**, 108/177, 33 S. E. 852.

Lien not given or defeated by estoppel. **Krueger**, 148/429, 436, 9 S. E. 867.

Based on security deed, estoppel to assert, against purchaser on statement of secured creditor. **Baron**, 144/472, 87 S. E. 396.

Claimants of, restrained by injunction, not afterward defeated by inability to obtain service for personal judgment against building contractor. **Mass. Bonding Co.**, 142/500, 83 S. E. 210.

Estoppel of landlord to set up, as against one induced by his representations to furnish supplies to tenant. **Alston**, 5 A. 110, 62 S. E. 713.

Landlord not estopped from claiming priority, by statements to merchant furnishing supplies to tenant, when. **Madison Supply Co.**, 8 A. 344, 69 S. E. 45.

Materialman estopped to assert, by orally authorizing payment to contractor. **Bailie**, 141/806, 82 S. E. 232.

May be contested on money rule, when too late to make counter-affidavit to foreclose. **Paris**, 106/209, 32 S. E. 141.

- Special, not created by estoppel, where none exists under statute. *Parks*, 124/523, 52 S. E. 616.
- Life-estate**, against assertion of, where life-tenant procured partition among remaindermen. *Crumley*, 141/603, 81 S. E. 871.
- Limitation** (contractual) of action on insurance policy, when no estoppel against plea of. *Metropolitan Life Ins. Co.*, 122/608, 50 S. E. 337.
- Of action, by contract, facts raising estoppel against setting up. *McDaniel*, 134/189, 67 S. E. 668.
- Map** or plat on which lots are subdivided and sold, how binding on original owner and grantees. *Hurt*, 138/380, 75 S. E. 418.
- Master** not estopped from defending suit for injury to servant, occasioned by failure to use safety appliance, if servant failed to procure it after being told where to get it. *Binion*, 118/283, 45 S. E. 276.
- Minor**, estopped from denying right to receive payments on wages set off to proceeding begun by him to foreclose laborer's lien. *Royal*, 5 A. 643, 63 S. E. 708.
- Admissions or silence of, as estoppel. *Wolff*, 105/158, 31 S. E. 425.
- Misapplication** of trust funds, knowledge of, and failure to object, did not estop cestui que trust. *Rusk*, 117/734, 45 S. E. 42.
- Misrepresentations**, estoppel on account of, extends to heirs and representatives. *Thornton*, 133/829, 67 S. E. 97, 134 Am. St. R. 226.
- Made in good faith, effect of. *Crosby*, 108/126, 132, 33 S. E. 913.
- Mistake** in ordering goods, though notice given, waived by accepting and using them. *Strickland*, 118/213, 44 S. E. 997.
- Mutual**, from ignorance of law; no estoppel. *Peyton*, 130/340, 60 S. E. 563, 124 Am. St. R. 170.
- Money** received and retained though recipient refused to sign receipt reciting acceptance for specified purpose, bound him. *Albany Fert. Co.*, 103/145, 29 S. E. 695.
- Mortgaged** personalty brought into partnership assets by inducement of mortgagee, latter can not foreclose as against partner other than mortgagor. *Booker*, 127/133, 56 S. E. 283.
- Mortgagee's** conduct at sale under junior execution concluded his subsequent contention that sale was subject to his lien. *Berg*, 104/587, 30 S. E. 744.
- Mortgage**; estoppel to set up that the law did not authorize national bank to take mortgage on real estate. *Perkins*, 18 A. 566, 90 S. E. 91.
- Foreclosure execution, no estoppel by laches in non-enforcement of. *Redding*, 144/100, 86 S. E. 241.
- Reciting it is second, holder not heard to deny validity of first mortgage. *Setze*, 140/607, 79 S. E. 540.
- Mortgagor** knew execution was unsigned, but did not publicly object to sale, and surrendered possession. He could not eject an innocent purchaser. *Rawles*, 104/593, 30 S. E. 820.
- Subsequently acquired title of, inures to benefit of mortgagee. *Hill*, 104/143, 30 S. E. 996.
- Motion** for new trial, as estoppel to raise question as to validity of judgment. *Baldwin*, 6 A. 529, 65 S. E. 335.
- Municipality** not estopped from discontinuing acts ultra vires, though improvements erected on faith. *Mayor &c. of Gainesville*, 147/344, 94 S. E. 247.
- Can plead its want of power to contract, though other party has fully performed. *Dawson Waterworks*, 106/697, 32 S. E. 907.
- Estoppel of, to repudiate purchase by officer. *Diamond Power Specialty Co.*, 11 A. 534, 75 S. E. 903.
- Non-use of part, longitudinally, of land conveyed for street does not estop city from setting up its title thereto, as against adverse holder under subsequent deed from same grantor. *Norrell*, 116/315, 42 S. E. 466, 59 L. R. A. 101.
- Not estopped by contract it had no power to make. *Macon R. Co.*, 112/782, 38 S. E. 60.

When not estopped to set up defense against suit for balance of debt, by having paid part. **Town of Wadley**, 124/356, 52 S. E. 335.

Mutual, estoppels must be. **Janes**, 123/46, 50 S. E. 954; **Harris**, 101/643, 29 S. E. 302. Recitals in judgment on money rule not conclusive on one not a party. **Thompson**, 144/713, 87 S. E. 1056. Stranger not benefited or bound. **Luke**, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559.

National bank not estopped from setting up invalidity of its guaranty. **First National Bank**, 135/614, 69 S. E. 1123, 32 L. R. A. (N. S.) 550.

Negligence, absence of, as preventing estoppel. **Peyton**, 130/338, 60 S. E. 563, 124 Am. St. R. 170.

Admission exonerating from charge of, but susceptible of explanation, not treated as. **So. B. Co.**, 116/696, 43 S. E. 64.

Of proposing party, as cause for binding him by his scrivener's wrong. **Newsome**, 146/193, 90 S. E. 855.

Negotiations not resulting in estoppel. **Piedmont Mills**, 131/130, 62 S. E. 52.

Note, judgment on, no estoppel, against defense on other note given in same transaction. **Worth**, 114/699, 40 S. E. 797.

Not favored; not applied to minors. **Jones**, 137/681, 683, 74 S. E. 51.

Notice essential to raise. **Oats**, 136/704, 71 S. E. 1097.

In parol acted on, party not estopped from insisting on waiver by failing to notify in writing. **Walker**, 134/399, 67 S. E. 1039.

Of assignment by tenant, and accepting rent from subtenant, does not estop landlord as to tenant. **Cuesta**, 1 A. 48, 57 S. E. 983.

Of lease by life-tenant, ownership of purchaser at executor's sale not prevented by. **Johnson**, 104/559, 30 S. E. 781.

Not shown, sheriff's deed not admissible in that connection. **Coursey**, 141/66, 80 S. E. 462.

To agent (solicitor) as effecting. **Athens Mutual Ins. Co.**, 134/500, 68 S. E. 91.

Nuisance, no estoppel of action against, by omission to object to construction of lawful work. **Tate**, 147/195, 93 S. E. 212.

Nunc pro tunc order, recitals in, could not affect status of demurrant who was dismissed. **Fitzpatrick**, 134/529, 68 S. E. 102.

Objection made, not estop from setting up different objection, when. **Great Eastern Casualty Co.**, 17 A. 614, 87 S. E. 904.

Not made by A to B's retention of goods which C, a merchant, had delivered to B on A's unaddressed order, intended to be presented to a different person, estopped A from denying liability to C for the goods. **Burruss-Manley Co.**, 11 A. 731, 76 S. E. 70.

To setting apart homestead, unsuccessful, did not estop from insisting on waiver of exemption. **Hendrix**, 113/1028, 39 S. E. 461.

Objector to order to put purchaser at sheriff's sale in possession, when not bound, not being party defendant. **Williamson**, 101/278, 28 S. E. 846.

Offer not accepted and acted on, no estoppel. **Southern Mfg. Co.**, 13 A. 848, 81 S. E. 263.

Officer not prevented from denying truth of his attestation. **Green**, 8 A. 302, 68 S. E. 1090.

Of building and loan association, statement of, to third person, as to amount of indebtedness of member, when binding on association. **Fulton B. & L. Asso.**, 103/376, 29 S. E. 932.

Who acquiesced in statute afterward held invalid, did not abandon office and lose right to salary. **Johnson**, 139/787, 78 S. E. 37.

Official capacity, party in, when not bound as individual. **Whitehead**, 127/774, 56 S. E. 1004.

Operation of estoppel is negative, not creative. **Parks**, 124/524, 52 S. E. 616.

Oral promise to convey land to wife, that she may obtain loan on it, estops husband from asserting title. **Clark**, 122/275, 50 S. E. 108.

Owner of property permitting another to hold it out as his own, rights of, as against one taking from that person a mortgage on it for a pre-existing debt. **Matthews**, 113/378, 38 S. E. 854.

Ownership, admission of, by proceeding against one as owner. **C. & W. C. R. Co.**, 105/15, 30 S. E. 972.

Conduct estopping claim of. **Whitchard**, 15 A. 190, 82 S. E. 770.

Estoppel of owner by allowing another to appear as owner. **Equitable Mortgage Co.**, 105/560, 31 S. E. 395.

Of property, representation as to, did not change invalid to valid mortgage clause; nor estop claimant from contending that lien did not cover property. **Penton**, 140/235, 239, 78 S. E. 917.

Parent knowing of minor son's employment without consent of parent, how affected. **Culberson**, 127/599, 56 S. E. 765, 9 L. R. A. (N. S.) 411, 9 Ann. Cas. 507.

Parol contract, estoppel at assert invalidity of, after receiving benefits. **Price**, 4 A. 46, 60 S. E. 800.

Parol surrender by grantee of estate in timber, no estoppel when not acted on. **Warren**, 129/329, 58 S. E. 858.

Partial payments with knowledge of defects raised no estoppel to plea of partial failure of consideration. **Burr**, 2 A. 52, 58 S. E. 373.

Participation as ground of. **Bridges**, 136/251, 71 S. E. 161.

Parties and privies, estoppel binds, not strangers. **Alaculsy Lumber Co.**, 134/603, 606, 68 S. E. 427.

Partitioner who signed return not estopped to testify that division was not fair and equitable. **Cox**, 142/487, 83 S. E. 115.

Partner estopped, by his signature to conveyance, from claiming title to property included therein. **Newsome**, 118/547, 45 S. E. 397.

May be estopped by ratification of copartner's unauthorized act. **Taylor**, 3 A. 288, 59 S. E. 844.

Not estopped by failure to avail himself of opportunity to know of misapplication of assets to pay copartner's debt. **Murphey**, 122/715, 50 S. E. 1004.

Presumed to know of transaction without scope of business; effect of failure to repudiate. **Sparks**, 104/323, 30 S. E. 823.

Widow of, waived right to be subrogated to rights of mortgagee, though she paid notes secured, under facts. **Ferris**, 110/102, 35 S. E. 347.

Partnership, estoppel to deny. **Reliance Fertilizer Co.**, 23 A. 582, 99 S. E. 44.

What allegation sufficient, and what proof necessary. **Mims**, 3 A. 247, 59 S. E. 711. Evidence showed partnership relation. **Michael Co.**, 3 A. 752, 60 S. E. 362.

Partners estopped by settlement of. **McLendon**, 2 A. 421, 58 S. E. 690.

What necessary to raise estoppel against denying. **American Cotton College**, 138/148, 74 S. E. 1084.

Written admission did not prevent denial as against one who did not know nor act on faith of it. **Stewart**, 102/836, 30 S. E. 264.

Payment by drawee did not estop him from proving that he was not indebted to drawer. **Drew**, 113/695, 38 S. E. 967.

Of part and obtaining indefinite extension of time for payment of balance, not estop from contesting amount of note. **Long**, 7 A. 460, 67 S. E. 123.

By note delivered to agent, estoppel to deny receipt of. **Chandler**, 132/847, 65 S. E. 128.

Partial, as estoppel to plead partial failure of consideration. **Cook**, 117/544, 44 S. E. 95.

Receipt for, in full, no estoppel to assert unsatisfied demand. **Armour**, 110/403, 35 S. E. 787.

Petitioner for habeas corpus estopped to deny the legal existence of court and judge. **Wright**, 120/670, 48 S. E. 170.

Plea necessary, to raise question of. **Tuells**, 113/698, 39 S. E. 455; **Hill**, 123/49, 51 S. E. 81; **Askew**, 147/610, 95 S. E. 5; **Boston Oil Co.**, 21 A. 685, 94 S. E. 1041; **Irvine**, 145/868, 90 S. E. 69; **Rowe**, 3 A. 506, 60 S. E. 275.

Of defendant in part put in evidence by plaintiff he may still rebut part that is against him. **Christian**, 120/314, 47 S. E. 923.

Of estoppel by consent to conveyance from D to B, not supported by evidence of consent to conveyance from B's assignee to P. **Parrott**, 105/93, 31 S. E. 417.

Of estoppel in pais; necessary allegations. **Delaware Ins. Co.**, 126/381, 55 S. E. 330, 7 Ann. Cas. 1134.

Of guilty, not estop principal from testifying to facts showing his innocence, on trial of accessory. **Snow**, 5 A. 611, 63 S. E. 651.

Of estoppel, no error in refusing to strike. Wife's representation touching her deed to husband. **Shackelford**, 135/30, 68 S. E. 838.

Not supported by proof of facts constituting an estoppel, but different from those pleaded. **Alston**, 5 A. 111, 62 S. E. 713.

Pleading; allegation of estoppel by judgment, referring to copy of record, too indefinite here. **Silvey**, 123/804, 51 S. E. 748, 1 L. R. A. (N. S.) 386.

Defects in, not properly and timely excepted to, judgment works estoppel. **Kelly**, 116/874, 43 S. E. 280.

Effect of allegations in. **Powell**, 145/704, 89 S. E. 753, L. R. A. 1917A, 306.

Matters that were or might have been set up in former suit, estoppel against. **Ga. R. Co.**, 124/596, 53 S. E. 251.

Privies in estate, rule of estoppel against, when not applied to subsequent purchaser without notice. **Coursey**, 141/66, 80 S. E. 462.

Estoppel by conveyance extended to. **Allen**, 146/204, 91 S. E. 22.

Promise not acted on, effect of. **Rodgers**, 108/23, 33 S. E. 662. Compare **Mannery**, 108/21, 33 S. E. 701.

To pay if collection not pressed, made after maturity of note and with knowledge of facts on which subsequent defense based, did not preclude defense. **Pearson**, 105/802, 31 S. E. 746.

Promissory note, as estoppel. **National Duck Mills**, 10 A. 245, 246, 73 S. E. 418.

Public not estopped by acts of officers done in exercise of power not conferred. **Town of Wadley**, 124/356, 52 S. E. 335. See **Ga. R. Co.**, 124/596, 618, 53 S. E. 251.

Purchaser, estoppel of, to deny legality of levy and sale. **Harms**, 21 A. 296, 94 S. E. 276.

At sale of land under younger execution, when not defeated by defendant paying off older security-deed. **Whelchel**, 102/113, 29 S. E. 169.

Estoppel of, to attack sheriff's sale. **McDonald**, 17 A. 471, 87 S. E. 711.

Question not raised in trial court, as to sufficiency of evidence, party not estopped from raising it in reviewing court, when. **Martin**, 20 A. 569, 93 S. E. 223.

As to estoppel, not sufficiently made. **Hill**, 123/61, 51 S. E. 81.

Quitclaim deed; no estoppel on maker thereof to acquire thereafter and set up paramount title. **Morrison**, 116/459, 42 S. E. 729; **Taylor**, 116/795, 43 S. E. 58; **Baxter**, 123/362, 54 S. E. 1036.

Railroad, property in possession of, when owner estopped to recover. Rule and qualification. **S. A. L. Ry.**, 143/412, 85 S. E. 91.

Ratification of agreement and sale during minority, by receiving proceeds after attaining majority. **Bates**, 148/157, 96 S. E. 178.

Goes to whole transaction. **Buchannon**, 135/393, 69 S. E. 543.

Ratification—(Continued).

Not effected by continued use by municipality under unlawful agreement. *Neal*, 142/205, 82 S. E. 546.

Of corporate officers signing contract of lease, admissibility of evidence as to. *Potts-Thompson Co.*, 135/452, 69 S. E. 734.

Of illegal sale by wife to husband, and of sale by his vendee. *Buchannon*, 135/393, 69 S. E. 543.

Of unauthorized act; facts not creating estoppel. *McMichen*, 10 A. 506, 73 S. E. 691.

Prevented wife coerced by husband to make conveyance, she having sued for proceeds and accepted money in compromise. *McClellan*, 135/95, 68 S. E. 1025.

Of contract ultra vires, not possible. *Horkan*, 136/561, 71 S. E. 785.

Ultra vires act, when national bank can not ratify. *First National Bank*, 135/614, 69 S. E. 1123, 32 L. R. A. (N. S.) 550.

Reason for refusal to comply, as ground of estoppel against setting up another reason known at the time. *Potts-Thompson Co.*, 135/465, 69 S. E. 734.

Given for refusal to pay indemnity under insurance policy, not estop from setting up different reason as defense, when. *Great Eastern Casualty Co.*, 17 A. 614, 87 S. E. 904.

Given for refusal to accept property bought, not estop from showing other reason as defense to suit, when. *Ewing*, 14 A. 305, 80 S. E. 693.

Given for refusing to take property purchased estopped vendee from relying on another reason as defense to suit. *Cowdery*, 126/786, 55 S. E. 918, 8 L. R. A. (N. S.) 137.

Given, not prevent relying on another, when. *Gavan*, 117/363, 43 S. E. 771.

Other than first given for conduct and decision of matter in controversy, when barred. *Beddingfield*, 2 A. 111, 58 S. E. 320.

Receipt; effect of recitals in bill of lading. *L. & N. R. Co.*, 8 A. 81, 83, 68 S. E. 617.

Receipt—(Continued).

In full for all demands, given on receiving part of amount claimed to be due, not estop from claiming the rest, when. *Ga. R. Co.*, 111/312, 36 S. E. 691.

Of overdue premium, as estoppel to set up forfeiture of insurance policy. *Royal Benefit Society*, 14 A. 204, 80 S. E. 545.

Of premium, not estop from setting up that issuance of policy was unauthorized, under facts here. *Planters Fire Asso.*, 113/802, 39 S. E. 466.

Of premium on insurance policy, as estoppel. *Queen Ins. Co.*, 10 A. 292, 73 S. E. 536; *Volunteer Ins. Co.*, 10 A. 255, 73 S. E. 602.

Of proceeds of sale under void judgment as. *Ray*, 119/678, 46 S. E. 849.

Of what is awarded, when prevents refusal of compliance, on plea of illegality or irregularity. *Murray*, 144/614, 87 S. E. 1068.

To executor, when no estoppel. *Hill*, 123/61, 51 S. E. 81.

Of proceeds of unauthorized sale, when estops from asserting title. *Garbutt*, 128/269, 57 S. E. 495, 13 L. R. A. (N. S.) 58. Effect of suit for accounting, against executor making such a sale. *Board of Education*, 128/163, 57 S. E. 359.

Of property under forthcoming bond, prevents party from raising question as to its execution or approval. *U. S. Fidelity Co.*, 4 A. 18, 60 S. E. 831.

Recitals of representations in written instrument may be basis for estoppel in pais or for equitable estoppel. *Coldwell Co.*, 138/239, 75 S. E. 425.

In conveyance of timber privileges did not estop grantor from disproving them. *Coldwell Co.*, 138/233, 75 S. E. 425.

In deed, as estoppel. *Grant*, 117/188, 43 S. E. 401.

In deed, when no estoppel. *Jenkins*, 109/35, 34 S. E. 355. See *Jewell*, 109/246, 34 S. E. 337.

Doctrine of estoppel rests on what postulate. *Toland*, 144/236, 86 S. E.

1089. General rule subject to exception. *Thrower*, 144/372, 87 S. E. 301.

In contract, as to services previously rendered, not estop. *Witt*, 13 A. 400, 401, 79 S. E. 243.

Reclamation of goods for fraud of buyer, estoppel of creditor as to, by what conduct. *Fowler*, 137/40, 72 S. E. 407.

Record admissible to show, though court had no jurisdiction of the proceeding. *Crumley*, 141/603, 81 S. E. 871.

Recovery of land not allowed to one having equitable title, who permitted sale and purchase to defeat execution against her. *Bond*, 135/733, 737, 70 S. E. 572.

Remaindermen sui juris, who received money from sale of land, with knowledge, issue as to estoppel of. *Hawks*, 141/423, 81 S. E. 200.

When estopped from attacking sale of land by life-tenant under void judgment. *Hicks*, 127/170, 56 S. E. 307.

When not estopped by condemnation proceeding. *C. & W. C. R. Co.*, 105/14, 30 S. E. 972.

Not estopped from recovering land, by order of court for sale, and deed of trustee. *Wadley*, 139/179, 77 S. E. 47.

Remedy, election of, estopped plaintiffs from denying their right to resort to. *Glisson*, 105/32, 31 S. E. 118.

Estoppel to pursue, not result from purchase by plaintiff at premature sale under attachment for purchase-money. *Cooper*, 125/167, 53 S. E. 1013.

Renewal note estopped maker from defenses or counter-claims known to him when he made it. *National Duck Mills*, 10 A. 245, 73 S. E. 418.

When not estop; defenses available against original note. *First National Bank*, 108/541, 34 S. E. 143.

Representations as to title of third person, when estop one making them from setting up title in himself. *Wright*, 113/881, 39 S. E. 510.

Of owner of real estate at time of purchase of building material, that it was to be used thereon, estopped him from setting up, in defense to fore-

closure of materialman's lien, that some of it was not so used. *Howell*, 22 A. 195, 95 S. E. 762.

Representative character of defendant personally sued, plaintiff not heard to deny, who alleged that such defendant contracted "as agent," etc. *Trust Co.*, 143/214, 84 S. E. 538.

Party defending as, cannot afterward maintain that judgment binds him but individually. *Wadley*, 140/236, 78 S. E. 912.

Request to charge, estoppel by. *Armour Fertilizer Works*, 22 A. 147, 95 S. E. 746; *Thompson*, 20 A. 176, 92 S. E. 599.

Res. judicata, doctrine of estoppel by, how far applies. *Cuesta*, 1 A. 48, 57 S. E. 983.

Plea of, when not sustained. *Macon R. Co.*, 127/294, 56 S. E. 419.

Restoration of money received in ignorance of its character, when not required of plaintiffs. *Hawks*, 141/423, 81 S. E. 200.

Retention of insurance policy precluded defense to action for premium. *Franklin Life Ins. Co.*, 10 A. 345, 73 S. E. 545; *Boykin*, 14 A. 666, 82 S. E. 60.

Retraxit, entry of, did not operate as matter of law to estop plaintiff under the facts. *McClellan*, 142/322, 82 S. E. 1069.

Reversioners not estopped by administrator's acquiescence and by payments to dowress and to creditors. *Richards*, 138/690, 76 S. E. 64.

Road alteration; estoppel of claim for damages; and as to construction on route different from that adopted. *Inman*, 141/150, 80 S. E. 635.

Public, equitable proceeding to establish, not maintained by applicants who procured order to remove obstructions from it as a private way. *Hagins*, 142/587, 83 S. E. 227.

Rule as to estoppel in pais; who affected. *Equitable Loan Co.*, 124/197, 52 S. E. 599, 3 L. R. A. (N. S.) 879.

That estoppels are not favored. *Alston*, 5 A. 113, 62 S. E. 713; *Madison Supply Co.*, 8 A. 344, 69 S. E. 45.

Rufing, party invoking, not heard to complain of. **Patterson**, 2 A. 755, 59 S. E. 18; **Wholesale Mercantile Co.**, 2 A. 777, 59 S. E. 106.

Party invoking, and in whose favor it was made, not allowed to question its propriety. **Brown**, 109/571, 34 S. E. 1031.

Invoked, though erroneous, binds. **Vaughn**, 108/660, 34 S. E. 192; **Oslin**, 108/804, 34 S. E. 168.

Sale (for taxes); consent of administrator, as estoppel to object to purchaser's title. **Anderson**, 126/394, 397, 55 S. E. 19.

Acquiescence and conduct which estopped from attacking, because bidding was deterred. **Conley**, 109/641, 35 S. E. 92.

Bidder at sheriff's sale estopped from denying title of defendant in fi. fa. **Allen**, 8 A. 314, 68 S. E. 1073.

Bidder estopped from attacking validity of. **Wall Lumber Co.**, 5 A. 604, 63 S. E. 637. When purchaser at void sale is not estopped. **Turnell**, 5 A. 847, 64 S. E. 114.

Invalidity of, could not be set up by defendant who bid off his own property at sheriff's sale and removed it so that it could not be found and resold. **McDonald**, 17 A. 471, 87 S. E. 711.

Invalid, of minor, no estoppel to recover the property without returning consideration, when. **Hughes**, 5 A. 331, 63 S. E. 231.

Of land held under bond for title, without conveyance to obligee; who could set up irregularity. **Green**, 101/262, 28 S. E. 692.

Under power of security-deed attacked by grantor; he can not set it up when grantee abandons rights under it and seeks judgment for debt. **Ray**, 106/492, 32 S. E. 603.

Under void execution, estoppel against denying validity of, by what conduct. **Parks**, 137/578, 73 S. E. 839.

School authorities taking benefit of public fund, estopped to deny that school

is subject to constitutional law making it free to children of the State. **Wilson**, 133/483, 66 S. E. 258.

Secret equitable interest, when not set up as against purchaser at sheriff's sale. **Morris**, 104/705, 30 S. E. 937. **Security-deed** not held to prevent paying the debt to make other security effectual. **Coleman**, 101/304, 28 S. E. 861.

Seduction, election to stop prosecution for. Marriage not declared void for duress; and bond not canceled for discovery of proof exonerating of crime. **Griffin**, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 14 Ann. Cas. 866.

Settlement made in ignorance of the facts and of rights did not estop ward, as against guardian. **Horne**, 113/231, 38 S. E. 768.

Of dispute, note in, estops what defenses. **Tyson**, 108/368, 33 S. E. 981.

Of mutual accounts, when not. **Henderson Warehouse Co.**, 105/217, 31 S. E. 551.

Receipt of money in, estopped party from setting up same cause of action against another, whom he could have sued. **Hunter**, 12 A. 23, 76 S. E. 782; **McLendon**, 2 A. 422, 58 S. E. 690.

Signature, estoppel to deny. **Mims**, 8 A. 850, 70 S. E. 139.

Signing as principal, when estops signer to set up that he was surety. **Pirkle**, 109/33, 34 S. E. 276.

Contract without reading it, effect of, as estoppel. **Jossey**, 109/439, 34 S. E. 664. See **Petty**, 109/675, 35 S. E. 82.

Silence, as estoppel. **National Duck Mills**, 10 A. 244, 73 S. E. 418; **Meetze**, 6 A. 189, 64 S. E. 672; **Armour**, 6 A. 659, 65 S. E. 803.

Where attorney failed to deny misstatement of opposing counsel, in reply to question of court, as to whether a certain allegation was denied by plea. **Cuthbert Ice Co.**, 20 A. 696, 93 S. E. 279.

As to claim of rent instalment for a year, after making deed to tenant,

when no estoppel. **Granger**, 118/164, 44 S. E. 983.

As to claim, when no estoppel. **Delaware Ins. Co.**, 126/381, 55 S. E. 330, 7 Ann. Cas. 1134.

As to legal defense to note, when maker estopped by. **Walker**, 124/858, 53 S. E. 313.

On seeing gift of chattel to third party does not prevent assertion of title against donee. **Hartz**, 144/98, 86 S. E. 220. See **Kemp**, 144/717, 87 S. E. 1030.

Rule as to estoppel by; not applicable to facts here. **Bank of Lumpkin**, 20 A. 1, 92 S. E. 778.

Standing by and allowing purchase of property without disclosing title, when no estoppel from. **Stonecipher**, 131/688, 63 S. E. 215, 127 Am. St. R. 249.

Standing by and allowing work to be done without objection, estoppel to contest paying assessment. **Draper**, 126/653, 55 S. E. 929.

Duty to speak must appear, to create estoppel by. **Bank of Lumpkin**, 20 A. 1, 92 S. E. 778.

State, estoppel against, by express grant; not from laches of its officers. **Ga. R. Co.**, 124/618, 53 S. E. 251.

Not estopped by unauthorized acts of public officers. **Georgia Granite R. Co.**, 144/666, 87 S. E. 897.

Not estopped or postponed, in right to collect debt, by officer's negligence or wrong. **Booth**, 131/750, 63 S. E. 502.

Stockholder not consenting to illegal amendment of charter, when estopped to recover dividend on different basis. **Woodruff**, 135/215, S. E. 1103.

Not allowed to take inconsistent positions as to right of stock to vote. **Georgia Life Insurance Co.**, 141/502, 80 S. E. 765.

Stock subscriber estopped to deny liability, for illegality of corporate organization. **Chappel**, 145/720, 89 S. E. 777.

When can not question corporate existence or show irregularities in creation or organization. **Torras**, 108/345, 33 S. E. 989.

When not in position to question validity of other subscriptions. **Cox**, 135/80, 68 S. E. 932.

Street or way shown on plat, reference to, in deed, binds grantor. **Schreck**, 131/489, 62 S. E. 705.

Assessment for improvement; facts raising estoppel against complaint of irregularities. **Burns**, 148/549, 97 S. E. 536.

Improvement by municipality. Estoppel of owner to question illegal proceeding, when not raised. **Hall**, 147/705 (dissent, 710), 95 S. E. 248.

Paving assessment, facts not raising estoppel against owner of property as to validity of. **Sanders**, 141/442, 81 S. E. 215.

See **Municipal Corporations; Roads and Streets**.

Subrogation, equitable estoppel to claim right of. **Wilkins**, 113/49, 28 S. E. 374, 84 Am. St. St. R. 204.

Sunday contract ratified, defendant bound by. **McAuliffe**, 135/853, 70 S. E. 322, 33 L. R. A. (N. S.) 255, 22 Ann. Cas. 290.

Supplemental petition demurrable for estoppel when considered with and as part of original. **Shackelford**, 130/858, 61 S. E. 984.

Surety could not maintain that bond filed here was executed in other State. **Epps**, 104/702, 30 S. E. 959.

Estopped by conduct from setting up that bond was of no force because principal was surrendered. **Spooner**, 134/323, 67 S. E. 813.

Not estopped as to defense against forfeiture of bond he executed with knowledge of character of offense alleged and of contents of indictment. **Mason**, 3 A. 348, 60 S. E. 4.

On appeal bond could not set up that he was also surety on replevy bond with counter-affidavit. **Stewart**, 106/176, 32 S. E. 14.

On bail-bond, though not entitled, was allowed to appear and participate in trial of main case. He could not afterward question as ruling he invoked. **Waldrop**, 114/620, 40 S. E. 830.

On bond for delivery of property at time and place of sale, when estopped to set up defenses to suit thereon. **Stroud**, 116/332, 42 S. E. 496.

Effect of proof of suretyship, where other surety dead who signed note on faith that movant was principal. **Chamblee**, 101/790, 29 S. E. 20.

Tax discrimination, favored one not heard to complain of. **Fincher**, 2 A. 742, 59 S. E. 22.

County not estopped from execution by previous auditing and settlement with tax-collector. **Read**, 145/881, 90 S. E. 60.

For one year, suit to restrain collection of, no bar to suit as to those of a different year. **Ga. R. Co.**, 124/597, 53 S. E. 251.

For schools under invalid law, plaintiffs not estopped from contesting, by previous election. **James**, 143/118, 84 S. E. 431. Taxpayer not estopped to contest legality of levy and collection of school tax in Early county. **Grier**, 143/428, 85 S. E. 323. Taxpayers when estopped, by delay, from complaining of levy for building courthouse. **Holt**, 118/895, 45 S. E. 690.

Tenant estopped from denying landlord's title. **Johnson**, 117/1007, 44 S. E. 846. Rule applies to tenant who entered before contract of rental made. **Willis**, 118/906, 45 S. E. 794. But may show he lost it during term of tenancy. **Raines**, 136/450, 452, 71 S. E. 738, 38 L. R. A. (N. S.) 863, Ann. Cas. 1912C, 347.

Heirs of, could not dispute his landlord's title. **Dasher**, 102/835, 30 S. E. 544. See catchword "Title," *infra*.

Estopped to deny title of one who occupies relation of landlord as to him. Extent of this rule. **Hodges**, 124/232, 52 S. E. 161, 1 L. R. A. (N. S.) 1181, 110 Am. St. R. 166, 4 Ann. Cas. 106.

Estoppel to deny tenancy. **Bullard**, 125/393, 54 S. E. 132.

Tenants for life, who were partitioners of land, when could not recover from purchaser from one such who had died. **Watkins**, 130/797, 62 S. E. 32.

Tender, as affecting right to set up defense. **High Co.**, 5 A. 864, 63 S. E. 1125.

Delayed by conduct; estoppel of contradicting party to take advantage. **Studdard**, 139/743, 78 S. E. 116.

Term of court to which case was returnable; estoppel to attack judgment on ground that the case was made returnable to wrong term. **Mosely**, 19 A. 550, 91 S. E. 943.

Testimony of party on former trial, not estop him from testifying to contrary. **Phoenix Ins. Co.**, 113/424, 38 S. E. 992.

Title, estoppel against asserting, by representations inducing sale of property. **Hall**, 147/27, 92 S. E. 536. By wife's assent to husband's sale of her land, in what circumstances. **Marchant**, 147/37, 92 S. E. 863.

No estoppel to claim, by agreement of public trustee or agent, like school board. **Board of Education of Fulton County**, 147/776, 781, 95 S. E. 684.

Of vendor, when vendee in adverse possession is not estopped to deny, who buys for his peace. **Yerby**, 147/342, 94 S. E. 246.

Admission of, by accepting bill of sale, did not estop from denying. **Evans**, 111/102, 36 S. E. 426.

Against assertion of, when raised. **Hawks**, 141/423, 81 S. E. 200.

Estoppel as to contesting sufficiency of transfer as a conveyance of, on facts recited. **Gaskins**, 141/552, 553, 81 S. E. 882.

Bailee estopped to deny bailor's title. **Pepper**, 7 A. 521, 67 S. E. 218; **Atl. R. Co.**, 1 A. 22, 57 S. E. 973.

By adverse possession, purchaser at administrator's sale not prevented from acquiring, by averment in former suit. **McAfee**, 144/473, 87 S. E. 392.

Concealed, estoppel to set up, against one extending credit on faith of apparent ownership of another. **Ross**, 113/1047, 39 S. E. 471; **Burt**, 113/1143, 39 S. E. 414.

Declaration no indication of abandoning claim to land, tending to induce

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another to buy. **Whatley**, 139/133, 76 S. E. 1025.

Disclaimer of, in ignorance, when no estoppel by. **Peyton**, 130/338, 60 S. E. 563, 124 Am. St. R. 170.

Effect of knowledge of purchaser of land that his vendor was in possession as agent of another. **Ragan**, 145/320, 89 S. E. 206.

Estoppel against claim of, by inducing another to buy land as property of third person, when effective. **Tune**, 131/528, 62 S. E. 976. When not. **Stonecipher**, 131/688, 63 S. E. 215. 127 Am. St. R. 248.

Estoppel as to claim of, by application for guardianship of the property as that of a minor. **Fullbright**, 131/343, 62 S. E. 188.

Estoppel by claim of ownership in replevying property. **Shealey**, 8 A. 642, 70 S. E. 100.

Estoppel of one dealing with property as to his own, to deny title in himself. **McDonald**, 117/122, 43 S. E. 422; **Southern Bell Tel. Co.**, 117/1004, 44 S. E. 885.

Estoppel of owner, by representing that another was owner. **Sewell**, 128/824, 58 S. E. 637, 13 L. R. A. (N. S.) 1118; **Deen**, 128/265, 57 S. E. 427.

Estoppel of owner by silence and standing by, where his property is sold as property of another. **Allen**, 8 A. 313, 68 S. E. 1073.

Estoppel of tenant in common by agreement preventing assertion of, against creditor of tenant. **McIntire**, 8 A. 803, 70 S. E. 198.

Estoppel to assert, not result from knowledge of illegal sale here. **Smith**, 123/287, 51 S. E. 474, 107 Am. St. R. 85.

Estoppel to claim; when not result from giving forthcoming bond for property levied on as property of another. **Williams**, 12 A. 76, 76 S. E. 757.

Estoppel to deny, not extended to purchaser from person so estopped, though with notice. **Alaculay Lumber Co.**, 134/603, 68 S. E. 427.
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Evidence did not show sayings creating estoppel to assert. **Bell**, 133/6, 65 S. E. 90. When purchaser bona fide not affected by representations. **Thornton**, 133/825, 67 S. E. 97, 134 Am. St. R. 226.

Evidence insufficient to show benefit which would estop children from claiming, as heirs at law of their father, land dealt with by their mother as her own. **McSwain**, 129/180, 58 S. E. 655.

Facts estopping municipal corporation from denying title of landholder. **City of Atlanta**, 17 A. 619, 87 S. E. 910.

Facts not sufficient to constitute estoppel against attack on. **Wall**, 143/417, 85 S. E. 325.

Grantee not estopped from setting up paramount, procured after discovering he has bought invalid one. **Moore**, 126/44, 54 S. E. 814.

In third person, estoppel of maker of deed to set up as against one claiming under the deed. **Campbell**, 111/200, 36 S. E. 621.

Is not conveyed by. Agent held legal title; quitclaim by his principal, for levy and sale, not good. **Sheppard**, 114/413, 40 S. E. 282.

Licensee or tenant not allowed to dispute, of licensor or landlord. **Watters**, 135/811, 814, 817 70 S. E. 338, 343, 344.

May be asserted after sheriff's sale after failure to file claim. **McLennan**, 106/211, 32 S. E. 118.

Not conveyed by. Prevents denial of title in other party. **Coursey**, 141/66, 80 S. E. 462.

Not derivable from one whose title the deriver has caused to be declared void. **David**, 140/240, 78 S. E. 909.

Of landlord, rule as to estoppel of tenant to deny, not prevent showing that what purported to be rent contract was purchase. **Leverett**, 8 A. 798, 70 S. E. 177.

Of landlord, tenant estopped from denying. **Bullard**, 125/393, 54 S. E. 132.

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Outstanding, by deed to secure debt, who may set up. **McDonald**, 120/405, 47 S. E. 918.

Outstanding, not set up by grantee, to defeat proceeding by minor beneficiaries of trust to cancel the deed as cloud on their title. **Turner**, 131/444, 62 S. E. 587.

Owner of land estopped from asserting, as against one whom he induced to buy the land as the property of another, though the title was recorded. **Brice**, 121/216, 48 S. E. 925.

Owner's failure to disclose, no estoppel in favor of one who was not bona fide purchaser without notice. **Meetze**, 6 A. 189, 64 S. E. 672.

Paramount in vendee, not set up as defense to suit for price of timber sold. **Harris**, 101/641, 29 S. E. 302.

Parties and attorney recovering money in suit, estopped to deny title of one of the parties to a part of the money. **Harris**, 18 A. 459, 89 S. E. 534.

Perfect and paramount, not set up by one who fraudulently induced buying of another. **Crosby**, 108/126, 33 S. E. 913.

Plea did not estop defendant from denying. **Brown**, 141/420, 81 S. E. 196.

Representations as to, as estoppel. **Wright**, 113/881, 39 S. E. 510.

Reservation, estoppel to assert, by consent to immediate resale by vendee of machinery. **Crenshaw**, 134/684, 68 S. E. 498.

Set up by city under later tax sale after conveying under prior sale for tax against same person. **Weyman**, 122/542, 50 S. E. 492.

Tenant estopped from denying landlord's, though the tenant was in possession claiming title when the contract of rent was made. **Johnson**, 117/1007, 44 S. E. 846.

To land, no estoppel against asserting, by seeing another place improvements without giving him notice. **Kemp**, 144/717, 87 S. E. 1030.

Under common grantor, rule as to parties claiming under, when not ap-

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plicable. **Gaskins**, 6 A. 167, 64 S. E. 714.

Under contract of conditional sale, no estoppel to assert, as against purchaser at bankruptcy sale, on facts of this case. **Myrick**, 137/154, 73 S. E. 7, 38 L. R. A. (N. S.) 554.

Wife not estopped from setting up, as against one asserting lien for material furnished for improvements of the property at instance of husband representing that he was owner, when. **Reaves**, 123/444, 51 S. E. 391.

Tort-feasor, when not allowed to set up that he is bound to compensate no one for result of his negligence. **Ga. R. Co.**, 124/468, 52 S. E. 916, 4 Ann. Cas. 200. When not allowed to invoke contract stipulation. **Merchants Co.**, 124/482, 52 S. E. 802.

Trover, forthcoming bond in, as estoppel. **Cooke**, 103/730, 30 S. E. 435.

Trust beneficiary not estopped by decree in action brought by trustee. **Smith**, 144/115, 86 S. E. 235.

Trustee, after acceptance of trust, can not change nature of his holding by taking conveyance to himself. **Turner**, 131/448, 62 S. E. 587.

Could not attack order his predecessor procured to make mortgage, as void for disqualification of judge to grant it. **Rutherford**, 102/50, 28 S. E. 1019.

Could not raise issue as to legality of his appointment. **Wagnon**, 104/417, 30 S. E. 895.

Sale by, ratified by children (remaindermen) of cestui que trust, binds whom. **Walker**, 101/665, 29 S. E. 8.

Who procured order and executed mortgage could defend against foreclosure, for want of service on beneficiaries. **Wagnon**, 104/417, 30 S. E. 895.

Ultra vires acts, when corporation cannot sue or defend on account of. **Cox**, 135/86, 68 S. E. 932.

Unconstitutional law, procuring passage and receiving benefits of, to what extent binding. **Sellers**, 127/246, 56 S. E. 284.

Unsigned execution, estoppel against contesting validity of. **Warwick**, 137/496, 73 S. E. 738.

Usury avoided conveyance without payment or tender of principal and interest. **Beach**, 101/357, 28 S. E. 110.

Estoppel against plea of, by maker of note representing to proposed purchaser of it that a certain amount is due and promising to pay it. **Walker**, 124/857, 53 S. E. 313.

Estoppel against attack upon deed for, after judgment, where no fraud, want of jurisdiction, etc. **Miller**, 133/187, 65 S. E. 410.

Estoppel of maker of note to set up, as against one whom he had induced to sign it as surety in ignorance of the usury, and who paid it. **Campbell**, 111/200, 36 S. E. 621.

Estoppel to set up, after judgment. **Hendrix**, 113/1028, 38 S. E. 461.

Lis pendens as affecting attack on deed for. **Swift**, 106/35, 31 S. E. 788; **George**, 106/40, 31 S. E. 790; **Marshall**, 106/42, 31 S. E. 791.

Party not estopped from attacking transaction for. **Brown**, 125/837, 54 S. E. 933.

Various ways of estoppel when applicable. **Johnson**, 120/535, 48 S. E. 137.

Vendee, to whose petition against vendor a demurrer was sustained, not barred from setting up his defenses to suit on purchase-money notes. **Satterfield**, 114/132, 39 S. E. 930.

Verdict, agreement as to, when estops complaint thereof. **Collins**, 118/205, 44 S. E. 1000.

Based on charge of court requested, estoppel to complain of. **Partee**, 19 A. 753, 756, 92 S. E. 306.

Not followed by judgment, no estoppel. **Walden**, 124/145, 52 S. E. 323; **Brown**, 125/837, 54 S. E. 933.

Void judgment of probate, as to will attested by only two witnesses, propounder not estopped by. **Fortner** 121/26, 48 S. E. 694.

Void levy and sale, estoppel to attack. **Ashley**, 109/653, 35 S. E. 89.

Voting at elections, whether voter estopped by, from objecting to irregularity

as to notice. **Ogburn**, 121/75, 48 S. E. 702.

Vouchee into court concluded, by judgment in ejectment, as to what defenses. **Taylor**, 131/416, 62 S. E. 291.

Effect of judgment as estoppel on. **McArthur**, 4 A. 61 S. E. 859.

Waiver, by conduct, of right to have land sold in strictly legal manner. **Whelchel**, 102/114, 29 S. E. 169.

By conduct, of stipulation in bill of lading requiring presentation of same before delivery of goods. **Southern R. Co.**, 103/187, 29 S. E. 816.

By one accused of crime, of trial, and of constitutional guaranty, when results. **Brantley**, 132/576, 579, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203.

Distinguished from estoppel. **Kennedy**, 6 A. 816, 66 S. E. 29.

Doctrine of, discussed and applied to law of contracts. **Alabama Construction Co.**, 131/370, 62 S. E. 160.

Of certified copies, by agreement to use original papers in evidence, estops objection. **Hinkle**, 133/255, 65 S. E. 427.

Of irregularity, by cross-examining witness, does not result where counsel not authorized to represent party. **Wright**, 127/368, 56 S. E. 442.

Of objection to proceeding, by raising no point until after verdict. **Atlanta Terra Cotta Co.**, 132/541, 64 S. E. 563. Of lack of notice, by participation, and by accepting award. *Ib.*

Of plea of statute of limitation, by debtor, estops claimant (his wife) from setting it up. **Strickland**, 131/415, 62 S. E. 322.

Of right to except to exclusion of recovery of punitive damages, not result from consent to verdict for actual damages. **Wright**, 112/884, 38 S. E. 94, 52 L. R. A. 621.

Of special defense, by not pleading. **Brantley**, 132/579, 64 S. E. 676, 22 L. R. A. (N. S.) 959, 131 Am. St. R. 218, 16 Ann. Cas. 1203.

Of strict compliance with statute as to filing brief of evidence, by consent to order, estops from moving to dis-

miss motion for new trial. **Mayor**, 131/465, 62 S. E. 584.

Ward, when not estopped by payment to his guardian of proceeds of sale at which administrator was a purchaser. **Moore**, 116/28, 42 S. E. 258.

Warranty of title, interest afterward acquired by warrantor passes to. **Oliver**, 141/126, 80 S. E. 630.

Warrantor of title, when concluded by judgment against warranty. **Taylor**, 131/416, 62 S. E. 291.

Water unreasonably detained; no estoppel by knowledge and failure to warn of damage claim. **High Shoals Mfg. Co.**, 136/22, 70 S. E. 641.

Backing by erection of dam, facts raised no estoppel to complain of. **Towaliga Falls Co.**, 124/1022, 53 S. E. 682.

Wife acquired title of husband, thereby defeating creditors. Her subsequent conveyance to him, he assuming her debt, void without order of superior court. Dissent: She is estopped. **Flannery**, 112/650, 37 S. E. 878.

As grantee of husband could not set up that his former instrument, foreclosed as a mortgage, was really a deed and void for usury. **Burks**, 108/783, 33 S. E. 711.

Not estopped as to cancellation of her deed to husband, made when they lived apart. **Echols**, 140/678, 79 S. E. 557.

Not estopped by adjudication against husband on habeas corpus for custody of child. **Taylor**, 108/765, 33 S. E. 420.

Not estopped from repudiating application of her money to debt of husband. **Webb**, 124/727, 53 S. E. 247.

Admission of liability, when estops from setting up that the debt was her husband's. **Wolff**, 105/153, 31 S. E. 425.

Secret equity of, estoppel against, in favor of husband's creditors, when raised. **Krueger**, 148/429, 96 S. E. 867.

Secret equity of, not good as against creditor of husband on faith of his apparent ownership. *Aliter*, where she

procured conveyance before judgment, her money having paid for the land. **Dill**, 118/210, 44 S. E. 989.

Statements of, after sale, that she knew, etc., did not show husband's authority to make it, nor estop her. **Cooper**, 108/553, 34 S. E. 145.

Turned over money as that of insane husband; effect on her action to recover it as her separate property. **Elliott**, 102/117, 29 S. E. 155.

When estopped from claiming title as against husband's creditors. **Whitchard**, 15 A. 190, 32 S. E. 770; **Ford**, 140/670, 79 S. E. 576.

Who made deed to settle husband's debt, not estopped to recover in ejectment. **Taylor**, 112/334, 37 S. E. 408. **Witness**, when party may contradict his own. **Turner**, 120/483, 48 S. E. 176; **Moultrie Co.**, 120/730, 48 S. E. 143.

Year's support; estoppel of widow, no estoppel of minors. **Jones**, 137/681, 74 S. E. 51.

ESTRAYS. See **Impounding**.

Construction of statute as to disposal of, strict. **Lofton**, 16 A. 616, 85 S. E. 927.

Sale did not pass title as against original owner, when no affidavit was made as required by law, as to correctness of marks and brands. *Id.*

EVANS COUNTY. See **Roads**.

EVICTIION. See **City Courts**; **Ejectment**; **Intruders**; **Landlord and Tenant**; **Railroads**, catchword "Passenger;" **Title**.

Acts amounting to eviction. **Roberson**, 7 A. 142, 66 S. E. 542.

Affidavit for warrant of; allegations insufficient; and warrant subject to dismissal. **Hicks**, 131/89, 62 S. E. 45.

Bankruptcy discharge did not affect right to proceed with. *Hamilton*, 112/651, 37 S. E. 859.

Counter-affidavit, in proceeding to evict intruder, may be filed at any time before actual eviction, if none previously filed. *Sheats*, 7 A. 272, 66 S. E. 812.

Should not be dismissed for non-appearance of defendant. *Yancey*, 129/788, 59 S. E. 777.

Damages for eviction of tenant. *Roberson*, 7 A. 142, 66 S. E. 542.

Defense against warrant of, when complete (parol agreement to convey land); and when decree for specific performance granted. *Bashinski*, 133/38, 65 S. E. 152. When no injunction granted. *White*, 133/528, 66 S. E. 171.

Three full lay or working days, for filing; excluding date of notice. *Holt*, 134/287, 67 S. E. 798.

Deprivation of use by casualty, legislation, or other cause apart from landlord's act, is not. *Lawrence*, 131/843, 63 S. E. 631, 19 L. R. A. (N. S.) 966, 15 Ann. Cas. 1097.

Description of premises; sufficiency of affidavit. *Williams*, 133/543, 547, 66 S. E. 263.

Double rent, recovery from tenant holding over after demand for possession. *Huckaby*, 137/375, 73 S. E. 633.

Equitable petition by tenant in resistance to, when demurrable. *Hays*, 124/908, 53 S. E. 399.

Not lie to restrain execution of. *Woolley*, 102/591, 29 S. E. 119.

Evidence showing renewal of lease by authorized agent of landlord, warrant defeated. *Noble*, 124/961, 53 S. E. 463.

Homicide in evicting intruder. *Rossi*, 7 A. 732, 738, 68 S. E. 56.

Intruder, remedy by eviction of (Civil Code, § 5380 et sq.), not apply to one who in good faith claims right to possession of the land. *Sheats*, 7 A. 272, 66 S. E. 812.

Issues made by warrant of, not extended by consent beyond those therein stated. *White*, 133/537, 66 S. E. 171.

Judgment in proceeding for, when not void for indefinite description of land. *Williams*, 133/546, 66 S. E. 263.

Not unlawful, where vendor defaulted in paying purchase-price, and vendee re-entered as purchaser at sheriff's sale. *Rodgers*, 122/279, 50 S. E. 95.

Quantum meruit for value of tenant's labor in plowing, fencing, etc., where evicted by landlord. *Roberson*, 7 A. 142, 66 S. E. 542.

Return term, omission of justice to deliver papers to clerk in time for, did not cause dismissal. *Tidwell*, 136/447, 71 S. E. 872.

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Tender after warrant issued, when will not prevent eviction or recovery of double rent. *White*, 133/538, 66 S. E. 171.

Title to land not involved; issue is of tenancy. *Arnold*, 147/91, 92 S. E. 889.

Is not involved in proceeding to evict intruder, except so far as it bears on the question of possession. *Smallwood*, 128/42, 57 S. E. 99; *Foreman*, 8 A. 822, 70 S. E. 158.

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EVIDENCE.

§ 5728 et sq.

See **Affidavits**; **Criminal Law**; **Deeds**; **Equity**; **Libel and Slander**; **New Trial**; **Practice in Courts of Review**; **Presumptions**; **Witness**.

1. Admissibility, Competency, Materiality, Relevancy.
2. Admissions, Confessions, and Declarations.
3. Burden of Proof.
4. Demonstrative and Physical Evidence.

5. Documents, and Evidence at Former Trial.
6. Expert and Opinion Evidence.
7. Hearsay Evidence.
8. Interrogatories and Depositions.
9. Judicial Notice.
10. Parol, Extrinsic, and Secondary Evidence.
11. Presumptions.
12. Res Gestæ.
13. Sufficiency and Weight of Evidence.
14. Witnesses.

1. ADMISSIBILITY, COMPETENCY, MATERIALITY, RELEVANCY.

Abandonment, a mixed question of law and fact. Witness not allowed to testify that an easement was abandoned, without giving the facts. *Gaston*, 120/516, 48 S. E. 188. May be shown by non-user. *Kelsoe*, 120/956, 48 S. E. 366, 102 Am. St. R. 136.

Abandoning, admissibility of testimony on issue as to, raised by traverse of attachment. *Dale*, 141/595, 81 S. E. 849.

Absence of plaintiff from trial of damage suit, testimony as to reason for, when not admissible. *Southern Ry. Co.*, 132/812, 65 S. E. 131.

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Of insurance policy; evidence tending to show non-acceptance. *International Ins. Co.*, 11 A. 664, 75 S. E. 1058.

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proceeds of check sent. *Hamilton*, 108/473, 34 S. E. 123.

Of street dedicated, how shown. When not implied. *Kelsoe*, 120/951, 48 S. E. 366, 102 Am. St. R. 136.

Accessible, not produced; presumption not applied. *Whitley*, 14 A. 577, 81 S. E. 797; *Morris*, 14 A. 732, 82 S. E. 314; *Jones*, 14 A. 811, 82 S. E. 470.

Accessory before the fact, admissibility of proof on trial of; and what necessary for conviction. *Rawlins*, 124/33, 52 S. E. 1.

Accomplice, acts and declarations of, when admissible against another. *Carter*, 106/373, 32 S. E. 345.

Declaration of, against joint conspirator separately tried, when not admissible. *Gibbs*, 144/166, 86 S. E. 543.

Acts and sayings, when admissible. *Barrow*, 121/187, 48 S. E. 950; *Harrell*, 121/607, 49 S. E. 703.

Testimony of, given on trial of other case, when properly excluded. *Knight*, 143/678, 85 S. E. 915.

To incest, not corroborated by her own testimony of prior acts; nor by her pregnancy; but she may be by acts and declarations of accused. *Taylor*, 110/151, 35 S. E. 161.

Witness not treated as, merely because he is jointly indicted with accused on trial. *Davis*, 122/564, 50 S. E. 376.

Necessity for corroboration of. *Cantrell*, 141/98, 80 S. E. 649.

Corroborated by confession of accused. *Hugle*, 147/35, 92 S. E. 646.

Accord and satisfaction, admissibility of testimony to show. *Gem Knitting Mills*, 140/15, 78 S. E. 408.

Completed; that plaintiff declined to be bound and offered to rescind, irrelevant. *Howard*, 102/137, 29 S. E. 143.

Proof without plea of, irrelevant. *Ingram*, 108/194, 33 S. E. 961.

Account sued on verified by affidavit, counter-affidavit may be filed after announcing ready. Plaintiff must then introduce further evidence, to recover. *O'Dell*, 114/910, 41 S. E. 41.

How proved. Christopher, 22 A. 707, 97 S. E. 97.

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Proof of correctness of. Linder, 1 A. 58, 57 S. E. 975.

Proof of, by witnesses who furnished articles and made memoranda thereof (not fully remembered), and by bookkeeper who copied the memoranda into the account. Swift, 8 A. 540, 544, 70 S. E. 97.

Admissibility of testimony as to correctness of items. Georgia Excelsior Co., 12 A. 797, 78 S. E. 611.

For goods sold and delivered, what evidence admissible in suit on. Buckeye Co., 122/293, 50 S. E. 66.

Stated, agreement as to, when implied. Borders, 6 A. 735, 65 S. E. 788.

Correctness of, admissibility of bookkeeper's testimony as to. Walker, 6 A. 521, 65 S. E. 301; Citizens Bank, 15 A. 815, 84 S. E. 232. When not provable by bookkeeper's testimony. Dougan, 115/1012, 42 S. E. 390.

Accountant's examination of books, admissibility of testimony as to. Crawford, 126/763, 55 S. E. 499.

Accounting between administrators temporary and permanent, certain matters held irrelevant in action for. Wright, 145/534, 89 S. E. 618.

Accused person, acts and conduct of, when not admissible in his favor. Hall, 141/7, 80 S. E. 307. Admitted against him. Frank, 141/243, 80 S. E. 1016; Walker, 141/525, 81 S. E. 442.

Can not testify as witness; his statement may be preferred to evidence.

This does not affect validity of penal law. Wilson, 138/489, 75 S. E. 619.

Act of God (weather), testimony admissible on issue as to. Ga. So. Ry. Co., 1 A. 204, 58 S. E. 236.

Acts tending to show a continuous course of conduct, admissibility of, to show motive. Roberts, 123/146, 157, 51 S. E. 374; Campbell, 123/533, 51 S. E. 644.

Additional testimony received after State has closed case, when no abuse of discretion. Glasco, 137/336, 73 S. E. 578.

May be received for plaintiff after refusing nonsuit, and may uphold verdict for him, though defendant was entitled to the nonsuit. Carr, 108/757, 33 S. E. 190.

No abuse of discretion in not receiving, after announcement that nonsuit would be awarded. Mitchell 23 A. 195, 98 S. E. 184.

Discretion of court to receive, after both parties have announced closed. Georgia &c. Ry. Co., 142/191, 82 S. E. 548.

Ademption of legacy shown; evidence of contrary intention of testatrix not received. Lang, 137/671, 74 S. E. 270, 40 L. R. A. (N. S.) 542.

Administration, want of, how proved. Greenfield, 112/691, 38 S. E. 44.

Testimony that there had been no administration, assumed to have been based on due examination of records, when not objected to at trial. Flint River R. Co., 10 A. 574, 73 S. E. 957.

Of estate not had, how proved. What testimony incompetent. Compton, 132/483, 64 S. E. 475.

Necessity for, and for sale of land of the estate. Green, 108/356, 33 S. E. 1009; Davitte, 108/668, 34 S. E. 327; Green, 108/751, 32 S. E. 846.

Method of proving absence of; and what not admissible. Dixon, 135/184, 69 S. E. 21.

Lack of, shown by witness testifying as to examination of records of ordinary's office. Atkinson, 10 A. 389, 73 S. E. 556; Wilson, 127/316, 56 S. E. 457; Gornto, 141/597, 81 S. E. 860.

Contest for letters of; what irrelevant. Jackson, 101/132, 28 S. E. 608.

Administrator's need to recover land, evidence of, when admissible. Graham, 131/785, 63 S. E. 348.

Administrator's right to recover land from heir's vendee, when order for

sale is prima facie evidence of. **Cochran**, 131/588, 62 S. E. 1048.

Administrator's sale; admissibility of evidence in suit against bidder for deficiency on resale. **Smith**, 141/841, 82 S. E. 242.

Admissibility doubtful, admitted. **Albany Phosphate Co.**, 4 A. 782, 62 S. E. 533; **Central Ry. Co.**, 133/177, 38 S. E. 394; **Smith**, 23 A. 77, 97 S. E. 454; **Goodman**, 122/118, 49 S. E. 922; **Hornsby**, 12 A. 697, 78 S. E. 267. Proper practice. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Doubtful, tendency of courts to admit, leaving weight to be determined afterwards. **Nugent**, 129/385, 58 S. E. 888.

Doubtful; no reversal for admitting. **Kimbrough**, 9 A. 302, 70 S. E. 1127.

Doubtful, but not materially harmful. **Atlanta & West Point R. Co.**, 23 A. 347, 98 S. E. 248.

Question as to, submitted to jury. **Holloway**, 16 A. 143, 84 S. E. 590.

Rules for, relaxed rather than restricted. **Jasper County**, 147/672, 95 S. E. 254.

Admissible for any purpose, not excluded, though disastrous in effect. **McCommons**, 131/319, 62 S. E. 230.

For one purpose, not for others, no new trial for receiving. **Purvis**, 145/519, 89 S. E. 571.

If it tends to prove an allegation of plaintiff's petition, whether it tends to establish a right to recover or not. **Tifton Ry. Co.**, 4 A. 191, 60 S. E. 1087.

In part, objection to whole not good. **Bruns. R. Co.**, 129/175, 58 S. E. 705; **Ga. R. Co.**, 129/502, 59 S. E. 217. Affidavit admissible in part, objection to whole not good. **Leath**, 117/589, 43 S. E. 985.

Under one theory, not rejected because not admissible under another theory raised by pleadings. **Capital City Brick Co.**, 5 A. 436, 63 S. E. 562.

Admission of relevant evidence at any stage of case is never ground for new

trial. **Boston Mercantile Co.**, 123/458, 51 S. E. 466.

Of evidence, subject to further proof, when not reversed where further proof not offered. **Hailey**, 144/147, 86 S. E. 135.

Admitted as of course, if no valid objection. **Andrews**, 118/1, 43 S. E. 852. Admitted provisionally, on promise of counsel to connect and show its relevancy, court not required afterward to rule it out without motion. **Stone**, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Provisionally, counsel objecting must afterward move to exclude, if proper so to do. **Sovereign Camp**, 143/560, 85 S. E. 827.

Provisionally, need not be ruled out by judge ex mero motu. Motion to rule out must be made, if provision not supplied. **Hix**, 124/547, 52 S. E. 890.

Provisionally on statement of counsel; necessity of later motion to rule out. **Alaculsey Lumber Co.**, 146/310, 91 S. E. 104.

Provisionally, over objection; effect of failure to make subsequent motion to exclude. **Williams**, 123/138, 51 S. E. 322.

With statement by court that the objection thereto will be passed on later, objecting party must thereafter move to exclude it. **Cawthon**, 119/396, 46 S. E. 897.

With statement that it would be ruled out, unless its relevancy should be shown by other evidence; not incumbent on judge afterwards to exclude it on his own motion. **Thomas**, 129/419, 59 S. E. 246; **Sasser**, 129/541, 59 S. E. 255.

Adultery not proved by reputation. **Bishop**, 124/294, 52 S. E. 743. But when evidence of reputation of woman and of house was admissible on trial of man for adultery and fornication. **Sutton**, 124/815, 53 S. E. 381.

Advancements, admissibility of testimony on issue whether sons received full

shares by way of. **Bland**, 138/712, 76 S. E. 50.

Irrelevant testimony on issue as to value of, when they were made. **Bland**, 138/712, 76 S. E. 50.

Whether conveyance of land to son was intended as, how determined. **Howard**, 101/224, 28 S. E. 648.

Advertisement, admissibility of testimony as to. Party inferentially connected. **Steinhauer**, 20 A. 734, 93 S. E. 280.

By agent, when must be shown to have been authorized or adopted by principal. **National Asso.**, 120/358, 47 S. E. 962.

Of local bill, question of, determined by legislature before passing it. **Burge**, 134/307, 67 S. E. 857; **White**, 134/532, 8 S. E. 103; **DeLoach**, 134/756, 68 S. E. 708, 20 Ann. Cas. 342; **Clark**, 134/789, 68 S. E. 598.

Advice of attorney, that party acted under, admissible. **Becker**, 120/1003, 48 S. E. 408.

Not admissible, when. **Braxley**, 17 A. 198, 202, 86 S. E. 425.

Affection, admissibility of evidence as to declarations and conduct evincing. **McWhorter**, 123/251, 51 S. E. 288.

Age, admissibility of evidence on question of. **Johnson**, 134/801, 68 S. E. 731.

Of party, relevancy of, on question whether he acted maliciously. **Gillis**, 129/403, 406, 58 S. E. 1051.

Of witness, as affecting credibility. **Ga. So. Ry. Co.**, 5 A. 740, 63 S. E. 525.

Agency, circumstances tending to prove. **Rome Ins. Co.**, 11 A. 539, 541, 75 S. E. 894.

Communications between principal and agent, admissible in suit of third persons, when. **Shippey**, 17 A. 128, 132, 86 S. E. 407.

Course of dealings as evidence of. **Conyers**, 111/754, 36 S. E. 947.

For buyer; that buyer paid for telegram sent by another for liquor, relevant to show agency of latter for former, on trial of latter for selling. **Silver**, 105/838, 32 S. E. 22.

For plaintiff, of defendant's predecessor in title, plaintiff allowed to testify. **Alaculsey Lumber Co.**, 146/310, 91 S. E. 104.

Implied from course of dealing, holding one out as such, etc. **Bush**, 3 A. 49, 59 S. E. 459; **Fitzgerald**, 3 A. 212, 59 S. E. 713.

Inferred from circumstances. **Barnum & Bailey Shows**, 17 A. 85, 86 S. E. 96.

May be established by proof of circumstances, apparent relations, and conduct of parties. **Cable Co.**, 127/65, 56 S. E. 108.

Inferable from facts here. **Indiana Fruit Co.**, 125/225, 54 S. E. 65.

Not provable by evidence of transactions with others, ratified by alleged principal. **Ham**, 2 A. 71, 58 S. E. 316.

Of husband for wife, as to execution of mortgage, not shown; error in admitting evidence. **Woodward**, 145/252, 88 S. E. 974. Not shown by addition of "agt." after his name. **Pioneer Co.**, 145/323, 89 S. E. 218.

Of indorser of note for payee, not shown. **Abbeville Trading Co.**, 3 A. 138, 59 S. E. 450.

Of purchaser in issue; irrelevant that seller had reasonable grounds for believing he was agent. **Blackstone**, 145/689, 89 S. E. 745.

Proof of agency, and *res gestæ* of agency. **Shippey**, 17 A. 128, 132, 86 S. E. 407.

Proof of, extends how far. **Collins**, 3 A. 238, 59 S. E. 727.

Shown by testimony that principal ratified acts of purported agents. **Wheeler**, 139/604, 77 S. E. 875.

Shown by proof of relative situation of parties. covers no scope larger than necessary for discharge of ordinary duties. **Wikle**, 116/309, 42 S. E. 525.

To execute certiorari bond, testimony not received as to, where not in rebuttal of testimony denying. **N. Y. Life Ins. Co.**, 4 A. 25, 60 S. E. 828. **Agent** not presumed to have authority to procure warrant and cause arrest of one whom he supposed stole money of

Agent—(Continued).

principal, in charge of the agent. *Wikle*, 116/309, 42 S. E. 525.

Transaction by one assuming to act as, admissible when accompanied by evidence of ratification. *Power*, 141/429, 81 S. E. 225.

Account of, with his principal, not received to charge liability on firm of which he was a member. *Smith*, 101/137, 28 S. E. 653.

Advertisement or declaration of, as to business of his principal, when not admissible. *National Asso.*, 120/358, 47 S. E. 962.

Authority apparently conferred binds his principal, though that actually given may differ. *Turner*, 143/44, 46, 84 S. E. 116.

Authority pleaded, no error in receiving testimony negating it. *Dolvin*, 131/300, 62 S. E. 198.

Authority to discount drafts, etc.; when implied. *Exchange Bank*, 118/434, 45 S. E. 316.

Authority to renew lease, what admissible on question of. Not necessarily implied from proof of authority to receive payment of rent. *Noble*, 124/960, 53 S. E. 463.

Authority, when not shown by evidence as to ratification of former acts. *Smith*, 113/625, 38 S. E. 956.

Authority; witness detailing circumstances from which his agency may be inferred may state he had authority to do a certain act within the scope of his agency. *Connor*, 7 A. 153, 66 S. E. 546. Agency not shown by declaration of one purporting to act as agent. *Heitmann*, 7 A. 740, 68 S. E. 51.

Aggravating circumstance in ejection of passenger, dangerous condition of place of ejection. *L. & N. R. Co.*, 6 A. 769, 65 S. E. 808.

Agreed statement of facts must be approved by trial judge, to become part of the record. *Silvey*, 137/104, 72 S. E. 907.

Direction that it may be reopened on next trial and each party be permitted to submit additional evidence.

Interstate Lumber Co., 16 A. 667, 85 S. E. 976.

Effect of silence of, as to essential averment. *Heard*, 113/159, 38 S. E. 393.

For former trial, admissible but not conclusive. *King*, 105/473, 30 S. E. 634.

Judgment on, not disturbed on subsequent contradiction. *Horrigan*, 126/127, 54 S. E. 961.

Agreement as to what should be evidence of a certain fact, effect of. *Chapman*, 20 A. 215, 92 S. E. 964.

For the purpose of suppressing evidence by getting witnesses out of the way, void. *Bailey*, 123/653, 51 S. E. 603, 107 Am. St. R. 153.

Pendente lite, and bond in accordance with it, no error in admitting. *Culpepper*, 142/164, 82 S. E. 549.

Relative to note different from the one sued on, when not admissible for defense. *Preston*, 120/546, 48 S. E. 316.

To postpone sale until further notice, testimony here irrelevant to show. *Thornton*, 116/115, 42 S. E. 348.

Alibi as to witness may be proved by his own testimony in reply to prisoner's statement. *Goolsby*, 133/427, 66 S. E. 159.

Rule of evidence as to. *Hunter*, 136/103, 104, 70 S. E. 643.

Alimony for child, when previous settlement and allowance to wife, and her separate property, considered in fixing amount of. *Johnson*, 131/608, 62 S. E. 1044.

Hearing, admissibility of testimony on. *Griffin*, 144/192, 86 S. E. 536; *Moss*, 144/194, 86 S. E. 548. Affidavits, or oral testimony, may be heard on application for temporary alimony. *Whitfield*, 127/419, 56 S. E. 490.

Permanent, admission of evidence in suit for, that defendant had paid none of temporary allowance. *Moss*, 147/312, 93 S. E. 875.

Allegata and probata not corresponding, nonsuit proper. *Plunkett*, 105/203, 30 S. E. 728.

Allegata et probata—(Continued).

Agreement of. **Lauchheimer**, 126/261, 55 S. E. 55.

Action for money paid out for stamps sent to plaintiff, and alleged to have been paid on his order, not sustained where the proof showed there was no such order. **Bank**, 113/1027, 39 S. E. 441.

Allegation as to injury to leg authorized recovery for injury to foot. **Wrightsville & T. R. Co.**, 9 A. 160, 70 S. E. 955.

Allegation of amendment substituting new corporate name of plaintiff, that its name was changed since suit was brought, should be proved. **Atlantic R. Co.**, 126/613, 51 S. E. 621.

Alleged number of article (saw) in trover case, not proved, immaterial, when. **Smith**, 6 A. 75, 64 S. E. 292.

Allegation that negligence was wilful and wanton; when a mere conclusion, and need not be proved. **W. U. Tel. Co.**, 6 A. 262, 64 S. E. 1123.

Amendment to cure variance as to name and description of animal. **Wall**, 9 A. 845, 72 S. E. 434.

Creditor alleging omission of specified articles from schedule of applicant for exemption could not prove that others were omitted. **Wood**, 111/32, 36 S. E. 423.

Different; evidence rejected. **Jennings**, 125/338, 54 S. E. 169.

Effect of variance as to items of account sued on. **Armour**, 9 A. 707 709, 710, 72 S. E. 168.

Evidence as to matters of defense other than those pleaded, not allowed. **Hunnicut**, 111/566, 36 S. E. 853.

Evidence at variance with allegations, properly excluded. **McKenzie**, 6 A. 829, 65 S. E. 1071.

Evidence not admissible under plaintiff's petition, but admitted without objection, and which could have been rendered admissible by amendment to petition, authorized recovery. **Napier**, 19 A. 401, 91 S. E. 579.

Failure to prove alleged conspiracy to defraud, no material variance here. **Hill**, 19 A. 334, 91 S. E. 434.

Allegata et probata—(Continued).

Failure to prove immaterial allegation, no fatal variance. **Georgia Railroad**, 12 A. 294, 77 S. E. 176.

Fatal variance; bank check numbered 136 instead of 36. **Haupt**, 108/53, 34 S. E. 313. Aliter: date may vary from that alleged. **Haupt**, 108/60, 33 S. E. 829.

Fatal variance between, as to the manner in which a lamp which fell set fire to a car. **Central Ry. Co.**, 16 A. 683, 85 S. E. 954.

Immaterial variance as to name ("Chas." and "Charlie"). **Ga. L. Ins. Co.**, 12 A. 862, 78 S. E. 1115.

Injuries to back, leg, and hip; and "other bruises and injuries upon his body" alleged, evidence as to injury to urinary organs admissible. **Atlanta R. Co.**, 117/181, 43 S. E. 425.

Negligence other than that alleged, irrelevant. **Central Ry. Co.**, 117/832, 45 S. E. 223. See **Ga. Brewing Co.**, 117/480, 43 S. E. 698.

No material variance between the names "Maria" and "Marie." **Watkins**, 18 A. 500, 89 S. E. 624.

Not competent for plaintiff in distress-warrant case to prove defendant had removed crops, where the warrant was not sued on that ground. **Holt**, 111/810, 35 S. E. 703.

Not necessary to prove each of several acts of negligence alleged, if proof of one establishes liability. **Savannah R. Co.**, 121/392, 49 S. E. 308. Difference between indictment and proof, as to name of church, not material here. **Edwards**, 121/590, 49 S. E. 674.

Not necessary to prove that tort was committed on day alleged in petition. **Southern Pine Co.**, 113/629, 38 S. E. 960.

One alleging delivery to carrier by himself as consignor may prove that the delivery was made through an agent, though the agent made the shipment in his own name. **Central Ry. Co.**, 117/832, 45 S. E. 223.

Plea of estoppel, not supported by proof of facts constituting an estop-

Allegata et probata—(Continued).

pel, but different from those pleaded. **Alston**, 5 A. 111, 62 S. E. 713.

Plea that plaintiff consented to conveyance by D to B, not supported by evidence of his consent to conveyance to P by B's assignee. **Parrott**, 106/93, 31 S. E. 417.

Recovery on evidence making different case from that alleged, not allowed. **Livsey**, 19 A. 687, 91 S. E. 1074; **Central Ry. Co.**, 19 A. 691, 91 S. E. 1068.

Rule as to variance between. **L. & N. R. Co.**, 129/847, 60 S. E. 162. No substantial variance as to where one injured in unloading freight-car was standing. *Ib.* No substantial variance as to title. **Williams**, 129/785, 59 S. E. 897.

Rule that there must be no variance between cause of action alleged and that proved. **Napier**, 19 A. 401, 405, 91 S. E. 579.

State not confined to proof of a particular sale under indictment for liquor-selling, when. **Davis**, 105/783, 32 S. E. 130.

Substantial conformity of, sufficient. **South. Ry. Co.**, 12 A. 242, 77 S. E. 3.

Substantial identity as to defamatory words, sufficient in action for slander; aliter as to libel. **Corker**, 8 A. 100, 68 S. E. 557.

Variance not material between allegation as to train jerking and throwing, and proof as to jumping. **Findley**, 7 A. 180, 66 S. E. 485.

No variance in. Ticket collector was called auditor, instead of conductor **Southern Ry. Co.**, 138/32, 74 S. E. 778.

Variant, as to accord and satisfaction. **Walker**, 110/582, 35 S. E. 771.

Variant; indictment for obtaining goods and money on false writing. **Carey**, 112/226, 37 S. E. 405.

Variant; plaintiff employed by one company could not recover of another as his employer. though he was doing work of that other. **Postell**, 112/602, 37 S. E. 869.

Variance between. Ownership of property, in robbery. **Staples**, 114/

Allegata et probata—(Continued).

256, 40 S. E. 264. Prescriptive use of private way. **Gardner**, 114/304, 40 S. E. 271.

Subjecting exempted property to execution. **Walker**, 114/317, 40 S. E. 254. Eviction, in suit for breach of warranty. **Sheppard**, 114/411, 40 S. E. 282.

Must be in substantial accord; but this is not the only prerequisite to recovery. **Kelly**, 116/873, 43 S. E. 280. See **Tillman**, 116/253, 42 S. E. 517; **W. & A. R. Co.**, 116/441, 444, 42 S. E. 737; **W. & A. R. Co.**, 116/448, 42 S. E. 785; **Leman**, 116/911, 43 S. E. 260.

Must correspond. That contract of three is invalid, not supported by evidence that it is so as to two of them. **Barlow**, 120/1015, 48 S. E. 344.

Variance. **Hudson**, 104/723, 30 S. E. 947; **Kidder Co.**, 104/785, 30 S. E. 965.

Should agree. Public crossing alleged, testimony irrelevant as to implied license to use path. **Snowball**, 130/86, 60 S. E. 189.

Substantial (not literal) correspondence of, required. **L. & N. R. Co.**, 135/420, 69 S. E. 564.

Variance in, when not material; as to year of making contract. **Gordon**, 145/683, 89 S. E. 749.

Variant; decedent was employed, not by defendant sued for killing him, but by another, with similar name. **Ga. R. Co.**, 110/190, 35 S. E. 332.

When no fatal variance in. **Hightower**, 118/277, 45 S. E. 267. Fatal variance in, on indictment for false swearing to teacher's report. Dissent: Variance immaterial here. **Thompson**, 118/330, 332, 45 S. E. 410.

Allegations of petition not demurred to, plaintiff entitled to prove. **Lyle**, 20 A. 380, 93 S. E. 20.

Material allegations of petition not demurred to, may be proved. **City of Macon**, 115/153, 41 S. E. 499. See **Crew**, 115/536, 42 S. E. 16.

Of plaintiff not supported; ground for upholding finding for defendant; defendant not estopped from so con-

tending in reviewing court, though such contention was not made on trial. *Martin*, 20 A. 569, 93 S. E. 223.

Of pleadings, as test of relevancy of testimony. *Tifton Ry. Co.*, 4 A. 191, 60 S. E. 1087.

When unnecessary for admission of evidence; death and lack of administration. *Orr*, 145/137, 88 S. E. 669.

Alteration of contract sued on, whether made, for jury; materiality, for court. *Heard*, 116/933, 43 S. E. 375.

Of note may be proved under plea of non est factum, if material. *Wilson*, 10 A. 98, 72 S. E. 943.

Of note, rejection of proof that they were forgeries, when harmless. *Hotel Lanier*, 103/605, 30 S. E. 558.

Unimportant and immaterial, deed not excluded for. *Brice*, 118/128, 44 S. E. 843.

Altercation and scuffle, testimony as to, without identifying participants, when admissible. *Flannigan*, 135/221, 69 S. E. 171.

Ambiguity in record, when relieved by construction, to uphold judgment of court of general jurisdiction. *Jones*, 120/642, 48 S. E. 134.

Not raised, as to chambers proceedings, by entry on minutes of proceedings in open court. *Morehead*, 131/808, 63 S. E. 507.

Amendment, allegations of, must be proved, though defendant be in default. *Miller*, 120/17, 47 S. E. 525.

Disallowed, evidence to support, inadmissible. *Cornwell*, 127/163, 56 S. E. 300.

Offered but disallowed, when admissible in subsequent litigation between same parties. *Draper*, 122/234, 50 S. E. 113, 69 L. R. A. 483, 2 Ann. Cas. 650.

Unnecessary, for proof that marriage of decedent was void, and her will not binding on heirs at law. *Medlock*, 102/212, 29 S. E. 185.

Of process, evidence in support of motion for, when admissible. *Myers*, 120/724, 48 S. E. 113.

Amount fixed by contract, evidence as to value irrelevant. *Moore*, 13 A. 392, 79 S. E. 246.

Stated as a whole, without items, in testifying as to damage; objection not made in time. *Jones*, 6 A. 514, 65 S. E. 361.

Animal's lack of breeding capacity, admissibility of evidence as to. *Crouch*, 9 A. 696, 72 S. E. 61.

Animus of accused, admissibility of testimony to show. *Scrutchens*, 146/189, 91 S. E. 25.

Of accused, who set up want of intention to kill person he shot. *Lampkin*, 145/40, 88 S. E. 563.

Of witness toward accused, not illustrated by inquiry as to witness having pistol at time stated. *Lindsey*, 145/9, 88 S. E. 202.

Answer "Yes," by witness, preceded by different questions, construed to apply to each, though followed by matter responsive to but one of them. *Carroll*, 121/197, 48 S. E. 909.

Evasive; averments in petition, of facts peculiarly in defendant's knowledge, taken as true. *Horne*, 122/45, 49 S. E. 722; *Raleigh R. Co.*, 122/700, 50 S. E. 1008.

Evasive, in pleading; effect of. *Young*, 15 A. 679, 84 S. E. 165.

Expected, counsel should state, on objection to question. *Green*, 134/482, 68 S. E. 77; *Tillman*, 134/660, 68 S. E. 504. See *Athens Mfg. Co.*, 134/600, 68 S. E. 329.

Expected, when must be stated to court. *Andrews*, 118/4, 43 S. E. 852; *Grant*, 118/258, 43 S. E. 279.

Not verified, not evidence for defendant, though in response to equitable petition not waiving discovery. *Armstrong*, 105/230, 31 S. E. 158.

Of county, verified by commissioner, admissibility of, on hearing for injunction. *Hutchinson*, 131/637, 62 S. E. 1048.

Of officer to rule, evidence not heard to dispute, if no traverse filed. *Read Co.*, 1 A. 420, 58 S. E. 122.

Of sheriff to rule, taken as true, if not traversed. *Wilkin*, 106/183, 32 S. E. 135.

Of witness not allowed; exception to refusal to allow should show what answer was expected, and that the judge was informed of it. *G., F. & A. Ry. Co.*, 15 A. 152, 82 S. E. 784.

Of witness volunteering improper statement, which counsel did not move to rule out, no ground for new trial. *Bird*, 128/254, 57 S. E. 320.

Rebuttal of answer in pleading by two witnesses, or by one and corroborating circumstances; rule as to, applies only where discovery is prayed for. *Toomer*, 123/477, 51 S. E. 393.

Not shown, questions no ground for new trial. *Brunswick R. Co.*, 129/175, 58 S. E. 705.

Anxiety felt by witness, testimony as to, when not irrelevant. *Southern Ry. Co.*, 141/35, 80 S. E. 323.

Argument to court in presence of jury, as to admissibility of; when no ground for new trial. *Corbitt*, 7 A. 13, 66 S. E. 152.

Latitude in drawing conclusions from testimony; and practice where counsel differ as to what was testified. *Milam*, 108/29, 33 S. E. 818.

Conclusions fairly inferable from evidence may be asserted. *Wrightsville R. Co.*, 118/583, 45 S. E. 453; *Sims*, 118/774, 45 S. E. 621. *Aliter*. *Graham*, 118/807, 45 S. E. 616.

Not to be used to indirectly introduce facts to influence jury, though counsel may read law and reported facts therein. *Cribb*, 118/316, 45 S. E. 396.

Arrest and prosecution, what admissible in support of defense to action for. *McPherson*, 137/130, 131, 72 S. E. 948.

Of witness, relevancy of. *Phinazee*, 22 A. 258, 260, 95 S. E. 878.

Evidence obtained by, when admissible. *Hill*, 8 A. 77, 68 S. E. 614.

Illegal, admissibility of evidence obtained by. *Warren*, 6 A. 18, 64 S. E. 111. Admissibility of, *Stoker*, 23 A. 11, 97 S. E. 273.

Illegal, evidence procured by, not admissible against person arrested. *Hughes*, 2 A. 29, 58 S. E. 390; *Sherman*, 2 A. 148, 686, 58 S. E. 393, 1122.

Illegal, evidence procured by search of person under, not admissible; aliter, as to evidence procured by search and seizure of property. *Smith*, 3 A. 326, 59 S. E. 934.

Illegal, evidence procured by, when not received. *Hammock*, 1 A. 126, 58 S. E. 66.

Legality of, not illustrated by absence of provision for issuing warrants in city charter. *Jenkins*, 3 A. 146, 59 S. E. 435.

Evidence of guilt, found on person under legal arrest, or by illegal search and seizure, when admissible. Not so when found by search of person under illegal arrest. *Hughes*, 2 A. 29, 35, 58 S. E. 390; *Stewart*, 2 A. 98, 58 S. E. 395.

Legality of, not proved by statement that it was made under a warrant. The warrant admissible. *Sherman*, 2 A. 148, 58 S. E. 393. See *Hughes*, 2 A. 29, 58 S. E. 390. Warrant functus officio, rearrest thereunder, illegal. *Sherman*, 2 A. 686, 58 S. E. 1122.

Proof of, inadmissible to discredit. *Beach*, 138/265, 75 S. E. 139.

Town ordinance relevant as showing, authority of marshal to make. *Porter*, 124/297, 52 S. E. 283, 2 L. R. A. (N. S.) 730.

Testimony of past violation of ordinance, when relevant on issue touching. *Yates*, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620.

Warrant for, when admissible without proof of prior proceedings attending its issuance. *Rushing*, 135/224, 69 S. E. 171.

Arrest of judgment, evidence not considered on motion for; record controls. *Sessions*, 3 A. 13, 59 S. E. 196.

Arson of house other than that charged, on same night, when admissible. *Chapman*, 112/56, 37 S. E. 102.

Assault and battery provoked by opprobrious words, character of plaintiff for

violence admissible on question of reasonable fears. **Dannenberg**, 118/885, 45 S. E. 682.

Concurrent with that of accused, on same person, admissibility of proof as to. **Smith**, 126/804, 55 S. E. 1024.

Assent to devise, when presumed. **Thaggard**, 112/326, 37 S. E. 367.

Assignment for creditors, when not evidence as to non-existence or transfer of debts not mentioned therein. **White**, 105/29, 31 S. E. 119.

Of claim of county, proof of. **Brown**, 20 A. 118, 121, 92 S. E. 774.

Assignment of error as to; what necessary, to be considered. **Herz**, 101/615, 29 S. E. 33.

As to admission of, not considered where not definite and specific. **Heath**, 142/106, 109, 82 S. E. 485.

In admitting, or rejecting, must set it out. **Manry**, 108/14, 33 S. E. 701; **Torras**, 108/345, 33 S. E. 989. Must show what was received, or ruled out. **Flowers**, 108/779, 33 S. E. 688.

On admission or rejection of, what insufficient. **Aug. So. R. Co.**, 105/135, 31 S. E. 420; **Rushing**, 105/166, 31 S. E. 154; **Walker**, 105/253, 31 S. E. 165; **Hughie**, 105/371, 31 S. E. 109; **Equitable Mortgage Co.**, 105/475, 30 S. E. 687; **Atlanta Con. St. Ry. Co.**, 105/498, 30 S. E. 934; **Reinhart**, 105/799, 31 S. E. 748; **Pearson**, 105/802, 31 S. E. 746; **Taylor**, 105/847, 33 S. E. 190; **Hays**, 114/25, 40 S. E. 13; **Boswell**, 114/43, 39 S. E. 897; **Derrick**, 114/81, 39 S. E. 924; **Cooper**, 114/116, 39 S. E. 917; **Moore**, 114/256, 40 S. E. 295; **Waldrop**, 114/610, 40 S. E. 830; **Bullock**, 114/627, 40 S. E. 734; **Crummey**, 114/751, 752, 40 S. E. 765; **Shockley**, 103/157, 29 S. E. 694; **Cook**, 103/386, 30 S. E. 27; **DeGraffenreid**, 103/651, 30 S. E. 560; **Fraser**, 112/13, 37 S. E. 114; **Fordham**, 112/228, 37 S. E. 391; **Frey**, 112/242, 37 S. E. 376; **Taylor**, 112/330, 37 S. E. 408; **Bray**, 112/364, 37 S. E. 370; **Chestnut**, 112/366, 37 S. E. 384; **Grace**, 112/425, 37 S. E. 737; **Webb**, 112/432, 37 S. E. 710; **Maynard**, 112/447, 37 S. E. 741; **Redding**,

112/491, 37 S. E. 711; **Denton**, 112/532, 37 S. E. 729; **Rodgers**, 112/624, 37 S. E. 877; **Atla. R. Co.**, 112/725, 38 S. E. 107; **Ga. R. Co.**, 112/817, 38 S. E. 40; **Adams**, 101/43, 28 S. E. 434.

On admission or rejection of, when not considered. **Long**, 120/621, 48 S. E. 185; **Benning**, 120/734, 48 S. E. 213; **Moran**, 120/847, 48 S. E. 324; **Atl. R. Co.**, 120/864, 48 S. E. 326; **McTier**, 120/878, 48 S. E. 355; **Central Ry. Co.**, 120/90, 47 S. E. 590; **Smith**, 120/161, 47 S. E. 562; **Allen**, 120/319, 47 S. E. 900; **Hunting**, 120/346, 47 S. E. 928; **Hixon**, 120/385, 47 S. E. 901; **Ketron**, 130/539, 61 S. E. 113; **Dyson**, 130/573, 61 S. E. 468, 124 Am. St. R. 179; **Summerlin**, 130/791, 61 S. E. 849; **Wadley Lumber Co.**, 130/136, 60 S. E. 836; **Moore**, 130/322, 60 S. E. 544; **Reynolds**, 130/460, 60 S. E. 1053; **Council**, 122/62, 49 S. E. 806; **Murphy**, 122/149, 50 S. E. 48; **Anderson**, 122/161, 50 S. E. 46; **Hall**, 122/252, 50 S. E. 106; **Buck**, 122/255, 50 S. E. 82; **Davis**, 122/566, 50 S. E. 376; **Murphy**, 122/715, 50 S. E. 1004; **Mayor & Co. of Macon**, 122/800, 50 S. E. 986; **Town of Adel**, 122/535, 50 S. E. 481.

Associating of accused persons after commission of crime, when may be proved on trial of one of them. **Thompson**, 4 A. 649, 62 S. E. 99.

Attachment levied on land without notice, when pertinent. **McCrary**, 104/666, 30 S. E. 881; see **Brock**, 104/10, 30 S. E. 424.

That other creditors had sued out, against absconding debtor, was irrelevant. **Dale**, 140/790, 79 S. E. 1127; **Dale**, 141/595, 81 S. E. 849.

Attorney and client, letter between, inadmissible, being a confidential communication. **Southern Ry. Co.**, 108/201, 33 S. E. 952.

Evidence of, rule as to. **Bracewell**, 21 A. 133, 94 S. E. 91.

Rule as to privileged communications, to protect client, not third persons. **O'Brien**, 102/493, 31 S. E. 100.

Assistant to solicitor-general, competency of testimony given by. *Fite*, 142/660, 83 S. E. 515.

Not compelled to give testimony derived from letters he received. *Coker*, 112/71, 37 S. E. 122.

Can not testify, on any trial, to communication by one under arrest, in anticipation of employment. *Haywood*, 114/111, 39 S. E. 948. Knowledge acquired by, may be not be used to detriment of former client. *Tucker*, 114/665, 40 S. E. 836.

Competency of, as witness. *Smith*, 113/140, 38 S. E. 406; *Equitable Securities Co.*, 113/1013, 39 S. E. 434; *Harkless*, 115/350, 41 S. E. 634.

Having testified for defendant in attachment, his representing other creditors was relevant. *Dale*, 140/790, 79 S. E. 1127.

Attorney's admission that client had made false statement about the case, inadmissible. *Armstrong*, 106/509, 32 S. E. 590.

Attorney's evidence as to client's communications to him, when competent. *Stone*, 111/48, 36 S. E. 321, 50 L. R. A. 356.

Authority to receive payment revoked, admissibility of evidence to show. *Roland*, 139/825, 78 S. E. 249.

Communications with client, not admissible. *Braxley*, 17 A. 198, 202, 86 S. E. 425.

Conversation with client, when admissible. *Coker*, 4 A. 728, 62 S. E. 483.

Conversation between attorneys in absence of party ought to have been excluded. *Cable Co.*, 118/913, 45 S. E. 787.

Fee awarded on grant of temporary alimony, though no direct evidence of value of services. *Carnes*, 138/1, 74 S. E. 785.

Fees, evidence admissible to show what are reasonable. *Mutual Life Insurance Co.*, 131/60, 61 S. E. 1034.

Fee, testimony of what reasonable, when irrelevant. Opinion not binding on jury. *Shaw*, 139/481, 482, 77 S. E. 577.

Attorney in fact, authority of, must be proved. *Southern Ry. Co.*, 108/121, 33 S. E. 850.

Auditor's report, new evidence on trial of exceptions to, when not received. *DuBose*, 136/673, 71 S. E. 1106.

Necessary practice in pointing out evidence bearing on exceptions to. *Smith*, 143/741, 35 S. E. 875.

Erroneous exclusion of testimony in chief, when no cause for new trial. *Murray*, 144/614, 87 S. E. 1068.

Evidence necessary for consideration of exception to, how to be presented. *Brooks*, 132/19, 63 S. E. 794; *Winkles*, 132/32, 63 S. E. 827.

Exception to, must specify essential evidence. *Lively*, 135/10, 68 S. E. 703.

Authority of servant to employ another, and to empower him to make arrests, when shown. *Southern Ry. Co.*, 118/341, 45 S. E. 303, 63 L. R. A. 257.

To buy on credit for another, admissibility of evidence as to course of dealings, offered to show. *Conyers*, 111/754, 36 S. E. 947.

To execute bond as agent, admissibility of testimony as to. *N. Y. Life Ins. Co.*, 4 A. 25, 60 S. E. 828.

To institute proceeding, when attorney not privileged to refuse to answer as to. *Alger*, 105/178, 31 S. E. 423.

To warrant soundness of thing sold, agent's testimony that he was without, when repelled. *Turner*, 143/44, 84 S. E. 116.

Award not pleaded, properly excluded. *Chattahoochee Valley Ry. Co.*, 9 A. 84, 70 S. E. 683.

Bad faith in procuring evidence no ground for excluding. *Sanders*, 113/269, 38 S. E. 841.

In selecting location for railroad right of way, what relevant to show. *Piedmont Mills*, 131/129, 62 S. E. 52.

Testimony offered to show, not prejudicial here. *Mauldin*, 15 A. 358, 83 S. E. 276.

Bail in small amount, irrelevant on trial for murder. *Greason*, 118/808, 45 S. E. 615.

Bankruptcy, that debtor has received notice of assignor's discharge in, as to debt secured by assignment, when not admissible. *W. U. Tel. Co.*, 126/191, 55 S. E. 21.

That neither of two partners had ever gone into, when irrelevant. *Kirkman*, 145/452, 89 S. E. 411.

Bank stockholders assessed by comptroller of currency; admissibility of evidence to prove liability. *Simmons*, 146/119, 90 S. E. 965.

Bar by limitation, and facts preventing bar, when evidence not admissible as to, in criminal case. *Hollingsworth*, 7 A. 16, 65 S. E. 1077.

Bastardy, admissibility of testimony on trial for. *McCalman*, 121/491, 49 S. E. 609.

Behavior of accused after time of misdemeanor, as, flight upon seeing town policeman in another place, when relevant. *Grant*, 122/740, 50 S. E. 946.

Bias of prosecutor not witness, irrelevant. *Hart*, 14 A. 365, 80 S. E. 909.

Of witness, great latitude allowed for cross-examination as to. *Griffin*, 18 A. 462, 89 S. E. 537.

Bigamy, evidence competent on trial for. *Murphy*, 122/149, 50 S. E. 48.

Irrelevant and prejudicial testimony on trial for, as to cruelty to wife, etc. *Robinson*, 6 A. 697, 710, 65 S. E. 792.

Bill of exceptions, matters appearing after judge's certificate to, must be identified, to be considered. *Jones*, 145/569, 89 S. E. 681; *Springer*, 145/730, 89 S. E. 780.

Bill of exchange deposited for collection; admissibility of testimony of agreement as to proceeds. *Goswick*, 143/309, 85 S. E. 112.

Bloodhound's conduct in following tracks, evidence as to. *Aiken*, 17 A. 722, 88 S. E. 210; *Harris*, 17 A. 723, 88 S. E. 121; *Fite*, 16 A. 22, 84 S. E. 485; *Aiken*, 16 A. 848, 86 S. E. 1076.

Board, care, and attention, action on quantum meruit for; irrelevant testimony in defense. *Kitchens*, 146/229, 91 S. E. 81.

Bona fides of conveyance; that grantor held possession as tenant of grantee is V. II—41.

a circumstance. *Johnson*, 138/348, 75 S. E. 245.

Of holding notes, not impeached by showing non-return for taxation in subsequent years. *Venable*, 102/208, 29 S. E. 181.

Parol gift of land to wife as showing, where conveyance to her attacked for fraud. *Lamkin*, 103/631, 30 S. E. 596.

Bona fide purchase, rule as to proof of. *Williams*, 128/311, 57 S. E. 801.

Bond as common-law (not statutory) undertaking, what facts not issuable in defense to suit on. *Mullis*, 143/618, 621, 85 S. E. 845.

Book entries, admissibility of testimony as to. *Georgia Excelsior Co.*, 12 A. 797, 78 S. E. 611.

Admissibility of testimony based on. *Central of Ga. Ry. Co.*, 23 A. 396, 98 S. E. 357; *Jarrell*, 23 A. 717, 99 S. E. 386. Cf. *Case Threshing Machine Co.*, 23 A. 46, 97 S. E. 443.

Bookkeeper, admissibility of evidence of. *Crawford*, 126/763, 55 S. E. 499.

Affidavit of, when sufficient verification of account, in justice's court suit of corporation. *Farmers & Traders Bank*, 9 A. 128, 70 S. E. 602.

Effect of entry of, as omission. *Patterson*, 8 A. 492, 70 S. E. 77.

Testimony of, as to account, admissibility of. *Walker*, 6 A. 521, 65 S. E. 301; *Citizens Bank*, 15 A. 815, 84 S. E. 232. *Swift*, 8 A. 540, 544, 70 S. E. 77.

Bookkeeping unusual, observations of witnesses as to, not pertinent. *Morris*, 106/461, 32 S. E. 595.

Book of corporation; identity proved by clerk without knowledge of its accuracy, who made no entries in it. *Simmons*, 146/118, 90 S. E. 965.

Bottom lands in the county, bad condition of, inadmissible on trial of suit for loss of crops by overflow caused by obstructions in stream. *Southern Ry. Co.*, 131/21, 61 S. E. 913.

Boundary line between lands, what admissible on issue as to. *Ivey*, 124/159, 52 S. E. 436, 110 Am. St. R. 160.

Brief of evidence reciting that A "testified to the same facts substantially as" B, whose testimony was set out, made it proper to treat B's testimony as A's. **Denson**, 111/809, 35 S. E. 680.

Abstract of deed in, should be adequate. **Parks**, 108/375, 33 S. E. 1005.

Admissions in petition required to be made part of, though stricken by amendment after evidence closed. **Lydia Pinkham Co.**, 108/138, 33 S. E. 945.

Alteration in, before transcript made, is for inquiry by trial court, not reviewing court. **Clark**, 110/911, 36 S. E. 297.

Amendment of, by substituting condensed statement of contents. **Co-op. Mfg. Co.**, 105/506, 31 S. E. 40.

Can not include that rejected. **Cain**, 102/573, 27 S. E. 681.

Consisting of stenographic report imperfectly reduced to narrative form by erasures and interlineations, not legal brief. **Jones**, 103/560, 29 S. E. 710.

Controls as to what was introduced notwithstanding indication elsewhere in record. **Central Ry. Co.**, 144/7, 85 S. E. 1017; **Jenkins**, 144/44, 85 S. E. 1042.

Does not result from agreement of counsel, or statement of effort bona fide to prepare. **Crumbley**, 135/724, 70 S. E. 655.

Essential to motion for new trial. Dismissal of motion for want of timely filing of brief. **Verner**, 144/847, 88 S. E. 204.

In Supreme Court, document that can not be treated as. **Carlisle**, 133/223, 65 S. E. 408.

Filing of, after term, what judge's order must show, to authorize. **Barnes**, 105/495, 30 S. E. 883.

For consideration of Supreme Court. **Jones**, 131/52, 61 S. E. 977; **Stewart**, 131/586, 62 S. E. 986; **Rexford**, 131/678, 63 S. E. 337; **Hancock**, 116/297, 42 S. E. 525; **Pullen**, 116/555, 42 S. E. 774; **Griffin**, 116/562, 42 S. E. 752.

How supplemented after bill of exceptions certified. Statute construed. **Jackson**, 132/127, 63 S. E. 841.

Immaterial things thrown into, bars consideration of the whole, in Supreme Court. **Price**, 108/145, 33 S. E. 956.

In auditor's report may consist of questions and answers. **Linder**, 125/115, 53 S. E. 588.

May be amended by judge, even after agreed on, approved, and filed. **Elkins**, 103/558, 29 S. E. 755.

Must be approved and filed, so as to be part of record; or be part of bill of exceptions. **Barrow**, 139/806, 78 S. E. 123.

Must be approved by trial judge, to come to Supreme Court in transcript of record. **Braswell**, 112/740, 38 S. E. 51.

Need not embrace documents that are parts of record, if it recite their introduction. **Norman**, 131/69, 61 S. E. 1039.

Not looked at to perfect an assignment of error. **Central Ry. Co.**, 120/90, 95, S. 47 S. E. 590. Failure to make, no cause to dismiss writ of error. **St. Amand**, 120/253, 47 S. E. 949. But see **Eubank**, 120/1048, 48 S. E. 426.

Not prepared in compliance with law, when immaterial things are included. **Hirsch**, 2 A. 520, 58 S. E. 786.

On motion for new trial. **Central Ry. Co.**, 133/94, 65 S. E. 155; **Merchants Bank**, 104/165, 30 S. E. 650. **Gentry**, 131/207, 62 S. E. 81; **Fulford**, 131/450, 62 S. E. 526; **Mayor &c.** of **Brunswick**, 131/467, 62 S. E. 584; **Cain**, 131/770, 63 S. E. 289; **Owens**, 131/803, 63 S. E. 346.

On nonsuit, filed after bill of exceptions tendered, not recognized. **Days**, 101/785, 29 S. E. 21.

Order granting time for filing, held complied with here. **Seale**, 105/456, 30 S. E. 640.

Order granting time for, silent as to approval, approval afterwards discretionary. **Co-op Mfg. Co.**, 105/506, 31 S. E. 40.

Recitals that do not properly go into. **Lockwood**, 132/460, 64 S. E. 655.

Refusal to approve. **Gwinn**, 110/318, 35 S. E. 150.

Substantially complying with law, not disregarded. When not treated as compliance. **Crumbley**, 135/723, 70 S. E. 655.

Time for filing, when not extended because of stenographer's failure to transcribe notes. **Bryant**, 105/483, 30 S. E. 732.

Time for having approved and filed. **Hall**, 120/305, 47 S. E. 907. Matter stricken therefrom before filing, not replaced. **Davis**, 120/843, 48 S. E. 305.

What insufficient as. **Ansley**, 110/279, 34 S. E. 611; **Collins Park Co.**, 110/307, 35 S. E. 121; **Johnson**, 110/307, 35 S. E. 117; **Buchanan**, 110/479, 35 S. E. 665.

Where nonsuit excepted to, need not go up in bill of exceptions, but may be specified and sent up as part of record if approved and ordered filed. **Part-ridge**, 105/278, 30 S. E. 737.

With auditor's report, what required. **Greer**, 133/193, 65 S. E. 416.

See **Auditors**; **New Trial**, catchwords "Brief of evidence."

Business, evidence showing character of, admissible, on question whether occupation included in class. **Lines**, 130/747, 61 S. E. 598.

Admissibility of testimony that a person was not engaged in any business, or that the witness did not know of any business that he was engaged in. **Borders**, 18 A. 333, 89 S. E. 451.

Income in issue, evidence of personal and household expenses, and of financial condition, irrelevant. **Lenney**, 118/427, 45 S. E. 317.

Of witness as affecting credibility. **Ga. So. R. Co.**, 5 A. 740, 63 S. E. 525.

Cancellation of deed for mental incapacity of grantor, undue influence of grantee, and non-delivery; admissibility of testimony. **DeNieff**, 138/249, 75 S. E. 202; **Hubbard**, 148/238, 96 S. E. 327. See **Equity**.

Of deed; testimony of maker's statements, when not admissible. **Jeter**, 135/22, 68 S. E. 787.

Capacity of child to render services of value, for decision by jury. **Central Ry. Co.**, 143/753, 85 S. E. 920.

Carriage of goods; matters proper for inquiry on issue of delay in transportation. **Ala. R. Co.**, 139/411, 77 S. E. 647, 45 L. R. A. (N. S.) 18.

Carrier's omission to furnish freight-cars, matters for consideration in determining as to. **Wadley Southern Ry. Co.**, 145/689, 89 S. E. 765.

Caution to jury, as to sole purpose for which they could consider certain testimony, when error not to give. **Brush Co.**, 103/512, 30 S. E. 533.

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For violence, as tending to show duress causing accused to do act charged; no error in rejecting testimony as to, where not preceded by proof as to duress. **McLeod**, 128/17, 57 S. E. 83.

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For violence, when not admissible. **Nix**, 120/162, 47 S. E. 516; **Owens**, 120/210, 47 S. E. 545. Good character of accused, effect of proof of. **Henderson**, 120/507, 48 S. E. 167.

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Of accused for peaceableness, in issue; admissibility of testimony as to habit of carrying concealed weapons. **Brantley**, 133/264, 65 S. E. 426.

Of accused for peaceableness, or generally, not shown by certificate of good character and of honorable discharge from U. S. army. **Taylor**, 120/858, 48 S. E. 361.

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Of accused put in issue by himself, rebuttal by introducing record of conviction in another case; identity of person indicated by identity of name. **Smith**, 11 A. 89, 74 S. E. 711.

Of accused put in issue, proof of his lascivious acts admissible in reply. **Frank**, 141/245, 246, 80 S. E. 1016.

Of accused put in issue, testimony of instances of his misconduct heard on cross-examination. **Ealawin**, 138/349, 75 S. E. 324.

Of accused, witness disclaiming knowledge of, not properly recalled and cross-examined as to specific act or statement. **Lynn**, 140/389, 79 S. E. 29.

Of accused put in issue by himself, Sate entitled to introduce evidence of bad character. **Strickland**, 12 A. 640, 77 S. E. 1070.

Of accused, witnesses called to prove, could be asked how long they had known him and had lived in same community, etc. **Peeples**, 103/629, 29 S. E. 691.

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Of decedent for violence, testimony of, confined to reputation in community; not extended to specific acts. **Powell**, 101/9, 29 S. E. 309, 65 Am. St. R. 277.

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Of deceased for violence, evidence as to, in murder case. *Daniel*, 103/203, 29 S. E. 767.

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Of decedent for peaceableness not competent, where not put in issue by accused of murder. *Worley*, 138/336, 75 S. E. 240.

Of deceased, in homicide case, not to be shown by specific acts, or conviction of crime of violence, but shown by general reputation. *Alexander*, 8 A. 531, 69 S. E. 917.

Of deceased, in homicide case, where it was testified that he cursed defendant; admission of testimony that he was not a "cursing man," was a church member, etc., if error, was not so material as to require a reversal. *Mixon*, 7 A. 808, 68 S. E. 315.

Of decedent for violence, evidence raised no issue as to, for submission to jury. *Kimbrell*, 138/413, 75 S. E. 252.

Of decedent put in issue by defense, testimony of peaceableness admissible. *Crawley*, 137/777, 74 S. E. 537.

Of defendant, effect of evidence as to. *Hagood*, 5 A. 91, 62 S. E. 641. Put in evidence by defendant, rebuttal by showing he had been in chain-gang; charge of court as to effect of this testimony. *Henderson*, 5 A. 495, 63 S. E. 535.

Of defendant, effect of evidence as to. *Webb*, 6 A. 353, 354, 64 S. E. 1001.

Of defendant put in issue by himself, rebuttal by introducing record of his conviction in another case. *McKenzie*, 8 A. 124, 68 S. E. 622.

Of female, testimony as to, admitted in rebuttal, where defense in homicide case was that it was committed to protect her virtue. *Gossett*, 123/431, 51 S. E. 394.

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Of parties may be put in issue. When not admissible. *Andrews*, 118/1, 43 S. E. 852. When considered in reconciling conflicts in evidence. *Maddox*, 118/69, 44 S. E. 822.

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Of party to suit, irrelevant testimony as to. *Mauldin*, 15 A. 353, 83 S. E. 276.

Of prosecutrix; testimony that the witness "knew of nothing wrong with her," admissible in rebuttal. *Morrow*, 18 A. 12, 88 S. E. 911.

Of slain man, for violence, not proper matter for proof at his slayer's trial, in absence of evidence that the defendant knew of it; no foundation for such proof could be laid in defendant's statement at trial. *Wiggins*, 16 A. 477, 85 S. E. 674.

Of witnesses, not considered by appellate court. *Henry*, 20 A. 742, 93 S. E. 311.

Of woman for chastity not attacked, her virginity irrelevant. *Bullard*, 127/289, 56 S. E. 429.

Of business standing of plaintiff, admissibility of evidence as to, in action for dishonoring check, or for libel. *Hilton*, 128/31, 32, 57 S. E. 78, 11 L. R. A. (N. S.) 224, 10 Ann. Cas. 987.

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Proof of, admissible on issue of fraud in procuring a contract of insurance. *German Am. L. A.* 102/720, 29 S. E. 615.

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Proof of, when not limited to a particular trait. *McClure*, 6 A. 305, 65 S. E. 33.

Proof of, as tending to show conduct in question; cases collected; reputation as forger admissible in support of plea of non est factum. *McClure*, 6 A. 303, 65 S. E. 33.

Proof, of, when overcomes proof of bad repute. *Jones*, 2 A. 433, 58 S. E. 559. When does not overcome facts

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showing guilt. *Butler*, 2 A. 623, 58 S. E. 1114.

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Reputation of house or inmates, admissible as corroborative evidence, but not itself sufficient to convict of keeping lewd house. *Coleman*, 5 A. 766, 64 S. E. 828.

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Testimony of, when admissible. *Bell*, 1 A. 36, 57 S. E. 1001.

Testimony that defendant charged with using opprobrious words "does not use profanity, and he is generally respectful to white people," not admitted; not proper mode of proving character. *Josey*, 20 A. 85, 92 S. E. 763.

Of woman unchaste and slayer's knowledge of it, where homicide resulted from another's persistent attempts to see her at defendant's home; admissibility of proof as to. *Rumsey*, 126/420, 55 S. E. 167.

What admissible on issue as to, raised by plea of justification of libel or slander. *Cox*, 101/482, 28 S. E. 655.

When specific acts not admissible to show. *Gossett*, 123/431, 441, 41 S. E. 394; *McClure*, 6 A. 305, 65 S. E. 33.

For peaceableness, never heard questioned, competent. *Powell*, 101/10, 29 S. E. 309.

Charge of court limiting the effect of certain evidence to a single purpose was not dispensed with by statement of counsel that it was introduced for that purpose. *Thompson*, 16 A. 832, 84 S. E. 591.

That if jury believe certain evidence they should not consider certain other evidence, when not error. *Central Ry. Co.*, 114/315, 40 S. E. 259.

Withdrawing, cured error in admitting. *Robinson*, 22 A. 25, 95 S. E. 324. *Hall*, 22 A. 113, 95 S. E. 936; *Bishop*, 18 A. 714, 90 S. E. 369.

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Chastity, admissibility of reputation for. *Ga. Life Ins. Co.*, 12 A. 856, 78 S. E. 1115.

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Child, wish of, in contest for custody of child under fourteen years of age, court may permit child to state; how far considered. *Chunn*, 117/551, 43 S. E. 987. Child-bearing capacity, proof as to want of, to show trust was executed, when not admitted. *Sanders*, 107/50, 32 S. E. 610.

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Circumstances, proof of, on trial for receiving stolen goods. *Wright*, 1 A. 160, 57 S. E. 1050.

Against accused, his sayings admissible as, when. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33.

Of guilt of selling liquor, finding bottles of whisky in house of accused, on day next after that alleged, admissible as. *Cole*, 120/485, 48 S. E. 156. Of arson. *Morgan*, 120/499, 504, 48 S. E. 238.

Of guilt, relevancy of, in trial for keeping lewd house. *McConnell*, 2 A. 446, 58 S. E. 546. Insufficient to connect accused with alleged arson. *Ragland*, 2 A. 492, 58 S. E. 689. Or with gaming. *Griffin*, 2 A. 534, 58 S. E. 781. Or to show fornication. *Murray*, 2 A. 620, 58 S. E. 1060.

Relevant that tend to make the proposition at issue more or less probable. *Summit Wagon Co.*, 6 A. 147, 64 S. E. 489; *Todd*, 2 A. 790, 59 S. E. 94.

Tending to show insolvency, and notice or knowledge of it. *McGregor*, 128/585, 58 S. E. 28, 13 L. R. A. (N. S.) 185.

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Circumstantial evidence. **Brannon**, 140/788, 80 S. E. 7; **Smith**, 140/791, 79 S. E. 1127.

As to marriage. **Miller**, 9 A. 827, 72 S. E. 279.

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Failure to charge as to, in case depending on. **Toler**, 107/682, 33 S. E. 629.

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In case of homicide. **Cantrell**, 141/99, 80 S. E. 649; **Carter**, 141/308, 80 S. E. 995; **Wilburn**, 141/510, 81 S. E. 444.

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Law, of not applicable without qualification, where confession of guilt proved. **Perry**, 110/234, 36 S. E. 781.

Law of, not involved where testimony is direct. **Sanders**, 122/143, 50 S. E. 66. When involved on trial for bigamy. **Murphy**, 122/149, 50 S. E. 48. Sufficient, for conviction of murder. **Davis**, 122/564, 50 S. E. 376.

Must be consistent with guilt and exclude other reasonable hypothesis, to convict. **Harwell**, 2 A. 619, 58 S. E. 1111; **Glaze**, 2 A. 704, 58 S. E. 1126; **Cooper**, 2 A. 730, 59 S. E. 20; **Lett**, 2 A. 829, 59 S. E. 85. These requirements met. **Jenkins**, 2 A. 684, 58 S. E. 1115.

Must preponderate to theory relied on for recovery, rather than to other reasonable hypothesis; must tend appreciably to establish conclusion. **Ga. Ry. Co.**, 1 A. 714, 57 S. E. 1076.

Of conspiracy and of murder. **Weaver**, 135/317, 69 S. E. 488; **Widincamp**, 135/323, 69 S. E. 535.

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Of value. **Atl. R. Co.**, 1 A. 667, 57 S. E. 1030; **Ayers**, 3 A. 307, 59 S. E. 924. Of weapon used in assault. **Little**, 3 A. 442, 60 S. E. 113. Of concealment of weapon. **Reese**, 3 A. 532, 60 S. E. 122.

Positive testimony may be. **Benton**, 3 A. 453, 60 S. E. 116. Positive testimony may be overcome by proof of circumstances. **Atlantic R. Co.**, 3 A. 508, 60 S. E. 277.

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Rules of law as to conviction of crime upon. **Cargile**, 136/55, 70 S. E. 873.

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To establish guilt of murder. *Owens*, 139/92, 76 S. E. 860.

To show conspiracy. *Carter*, 141/208, 80 S. E. 995; *Coleman*, 141/734, 82 S. E. 228.

To show knowledge of illegal purpose. *Bashinski*, 123/508, 51 S. E. 499.

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Claim case, admissibility of evidence on trial of. *Stewart*, 135/112, 68 S. E. 1037.

Claimant not allowed to prove that mortgagor of chattels levied on is not indebted. *Ford*, 120/606, 48 S. E. 180.

Claimant not allowed to show usury in the debt on which execution levied was founded. *Ray*, 110/305, 35 S. E. 117.

Irrelevant testimony on trial of; value of land sold under previous levy of execution. *Sutton*, 141/622, 81 S. E. 854.

Claim interposed by wife to property levied on as husband's, admissibility of testimony on. *Taylor*, 139/797, 77 S. E. 1062.

Claim interposed for delay, admissibility of testimony on. *Taylor*, 139/797, 77 S. E. 1062.

Claim interposed for delay, testimony incompetent on issue as to. *Ray*, 111/853, 36 S. E. 769.

Prima facie case against claim by proof of possession. Presumption on proof of title. *Russell*, 134/65, 67 S. E. 404.

Claim of indebtedness, recital as to amount of, in agreement as to other matters, did not estop creditor. *Wardlaw*, 13 A. 595, 79 S. E. 523.

Claim of ownership, admissibility of proof as to, to show good faith. *Sackett*, 115/468, 41 S. E. 564.

Clerical error in writing name of grand juror on indictment, competency of testimony as to. *Bexley*, 141/1, 80 S. E. 314.

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Of probated will in evidence, not allowed. *Churchill*, 132/666, 64 S. E.

691, 49 L. R. A. (N. S.) 875, Ann. Cas. 1913E, 1203.

Collateral facts not to be rejected merely because they show guilt of independent crime. *Frank*, 141/243, 256, 80 S. E. 1016.

Collaterally pertinent facts not alleged in plaintiff's petition, admissible in his behalf. *Macon Consol. St. R. Co.*, 113/212, 38 S. E. 756.

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Collusion to defeat creditors, slight circumstances sufficient to authorize inference of. *Bryant*, 19 A. 82, 90 S. E. 1027.

Color, difference in, as affecting question of intent to rape, where negro man assaults white woman. *McCullough*, 11 A. 612, 76 S. E. 393; *Fite*, 11 A. 691, 76 S. E. 397.

Colorable transaction, admissible testimony to rebut theory of; statement by one defendant to the other. *Groover*, 148/798, 98 S. E. 503.

Common intent or conspiracy, proof of, by acts and conduct. *Davis*, 114/107, 39 S. E. 906.

Common law presumptively of force in other State, unless contrary appear. *Coyle*, 112/122, 37 S. E. 163.

Common scheme or related offenses, admissibility of testimony as to. *Frank*, 141/244, 80 S. E. 1016.

Communications between attorney and client, not admissible. *Braxley*, 17 A. 198, 202, 86 S. E. 425.

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Comparison of one house with another, to illustrate comfort and convenience; conditions must be similar. *Dunn*, 144/148, 86 S. E. 385.

Compelling attendance of witness in criminal case; power of court to require bail or imprison, to prevent leaving jurisdiction before trial. *Crosby*, 8 A. 463, 69 S. E. 582.

Compensation, what reasonable; admissibility of testimony as to. *Smith*, 19 A. 370, 91 S. E. 578.

Competency of evidence not dependent on whether competent as time of filing suit. *Smith*, 10 A. 283, 73 S. E. 428.

Competent for one purpose, not erroneous to admit it. *Fidelity Co.*, 119/316, 326, 46 S. E. 444.

Determined by the court; its credibility and weight by the jury. *Lynn*, 140/393, 79 S. E. 29.

Question as to, waived by not objecting at proper time. *Jones*, 15 A. 41, 82 S. E. 593.

Of persons jointly indicted, to testify for or against each other. *Williamson*, 9 A. 444, 71 S. E. 509.

Of workman, evidence tending to show want of. *Merchants & Miners Trans. Co.*, 4 A. 655, 663, 62 S. E. 130.

Complaints, exclamations or expressions of pain, when admissible. *Powell*, 101/9, 29 S. E. 309, 65 Am. St. R. 277; *Central Ry. Co.*, 22 A. 35, 95 S. E. 323; *City of Cedartown*, 2 A. 588, 59 S. E. 836.

Compulsory evidence against self. *Aiken*, 16 A. 848, 86 S. E. 1076. No error in requiring ordinary, indicted for malpractice, to point out to prosecuting officer certain public records in the ordinary's office, desired as evidence for the prosecution. *Kent*, 18 A. 30, 38 S. E. 913.

Compulsion of testimony, history of. *Crosby*, 8 A. 464, 69 S. E. 582. Compulsion to produce self-criminating evidence, not shown by unlawful search of person and premises of accused while he was under arrest. *Martin*, 148/406, 96 S. E. 882; *Hysler*, 148/409, 96 S. E. 884; *Groce*, 148/520, 97 S. E. 525.

Concealment and false accounts of disposition of money intrusted, as circumstances, on trial for embezzlement. *Bridges*, 103/21, 29 S. E. 859.

Of property to prevent levy, effect of evidence showing, in claim case. *Cronan*, 107/296, 33 S. E. 56.

Condemnation of land for right of way. Admissible to show prior effort of condemnor to acquire the property by

contract. *Piedmont Mills*, 131/130, 62 S. E. 52.

Of land; testimony of intention as to its control, etc., when excluded. *Central Ga. Power Co.*, 137/347, 73 S. E. 505.

Of land; what testimony inadmissible on trial of appeal from award. *Darien R. Co.*, 132/672, 64 S. E. 785.

Matters proper to be considered in determining as to diminution of market value. *Mallory*, 131/271, 62 S. E. 179.

Of land; general estimate of damages not admissible; what opinion received. That witness had been assessor in other case, not competent. *Central Ga. Co.*, 143/10, 84 S. E. 67.

Of private property, admissibility of evidence on trial of issue as to damages. *Central Ga. Power Co.*, 137/120, 72 S. E. 900.

Of property; admissibility of testimony on trial of appeal from award. *Gate City Co.*, 136/456, 464, 71 S. E. 903.

Of way; rent before paid, when not an element in estimating damages. *L. & N. R. Co.*, 143/331, 85 S. E. 110.

Conditionally admitted; court not bound to exclude afterwards, without motion. *Thomas*, 129/419, 59 S. E. 246; *Sasser*, 129/541, 59 S. E. 255.

Objection waived if not renewed. *Duckett*, 23 A. 631, 99 S. E. 151; *Quinn*, 22 A. 632, 97 S. E. 84.

On promise to connect it with other evidence; motion to exclude should be made after failure to fulfill promise. *Thurman*, 14 A. 543, 81 S. E. 796.

See catchword "Admitted," supra.

Conditions permitting, proof of, when not incumbent on plaintiff alleging breach of contract. *Buick Motor Co.*, 138/282, 75 S. E. 354.

Conduct and declarations of accused person, and testimony explaining, when admissible. *Frank*, 141/243, 80 S. E. 1016.

General conduct, proof of. *Josey*, 20 A. 85, 92 S. E. 763.

Matter for cross-examination. *Fountain*, 23 A. 117, 98 S. E. 178.

Of accused which was not connected with offense charged and which was calculated to excite prejudice against him, admission of evidence as to, required reversal. *Lowman*, 109/501, 34 S. E. 1019.

Of accused at previous times, as bearing on issue whether defense was an afterthought. *Maxwell*, 146/110, 90 S. E. 279.

Of witness, testimony received to explain; that he felt anxious because, etc. *Southern Ry. Co.*, 141/35, 80 S. E. 323.

Reasonably indicating consciousness of guilt, relevant. *White*, 127/273, 56 S. E. 425; *Maxwell*, 146/10, 90 S. E. 279.

Subsequent to and disconnected with transaction alleged, testimony as to, irrelevant. *Ga. Ry. Co.*, 1 A. 832, 58 S. E. 88.

Uncommunicated threats to illustrate. *Rouse*, 135/228, 69 S. E. 180.

Confidence of witness's employer in his integrity, irrelevant and inadmissible. *Peters*, 124/80, 52 S. E. 147.

Confidential communications, rule as to, when not applied to attorney. *Turner*, 123/6, 50 S. E. 969, 107 Am. St. R. 76.

Letter of general manager of railroad to roadmaster was not. *Ga. & Fla. Ry.* 10 A. 101, 72 S. E. 951.

To attorney, rule as to, when applicable. *Philman*, 103/82, 29 S. E. 598; *Stone*, 111/48, 36 S. E. 321, 50 L. R. A. 356.

Wife's testimony here excluded as. *Toole*, 107/478, 33 S. E. 686.

Confidential or fiduciary relation must be proved; not presumed from relationship of brothers. *Crawford*, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932. Not appearing, contract not reformed. *Weaver*, 134/149, 67 S. E. 662.

Congress has no power to prescribe rules of evidence for State courts. *O'Connor*, 11 A. 248, 75 S. E. 110.

Has power to prescribe rules of, for Federal, but not for State courts. *Small*, 112/279, 37 S. E. 481, 53 L. R. A. 130, 81 Am. St. R. 50.

Conjectural and speculative allegation not susceptible of satisfactory proof; that sleeping passenger would have been waked by due announcement of station. *Seaboard Ry. Co.*, 122/307, 50 S. E. 88, 106 Am. St. R. 134, 2 Ann. Cas. 675.

Connecting testimony of different witnesses, so as to render it admissible. *Stephens*, 9 A. 608, 71 S. E. 1004.

Consciousness of guilt, relevancy of circumstance indicating. *Frank*, 141/244, 80 S. E. 1016.

Consent based on employer's understanding of contract, not communicated to employees; testimony incompetent. *Stewart*, 132/423, 64 S. E. 471.

Of counsel for testimony to be used for a purpose did not waive right to object to it. *Mobley*, 143/565, 85 S. E. 859.

Of one forbidding act of his employee, shown by circumstances. *Groves*, 8 A. 690, 70 S. E. 93.

To stay of execution does not show that verdict was rendered by consent. *Willingham*, 112/420, 37 S. E. 737.

Consideration, admissibility of testimony on issue as to failure of. *Hutcherson*, 142/262, 82 S. E. 643.

Evidence admissible as to, over objection that the instrument was under seal. *Conant*, 120/568, 48 S. E. 234.

Failure of, evidence showing, not allowed, where not pleaded. *Sams*, 103/678, 30 S. E. 668.

Failure of, evidence supporting plea of, improperly excluded. *Steed*, 103/550, 30 S. E. 626.

Failure of, partial, may be proved under plea of total failure. *Pidcock*, 7 A. 300, 302, 66 S. E. 971.

Failure of; testimony here irrelevant on issue as to. *Means*, 115/371, 41 S. E. 633.

Failure of, value placed on goods, in applying for insurance, admissible on plea of. *Ryals*, 106/525, 32 S. E. 645.

Illegal (cotton-future transaction), evidence of, immaterial where the parties had settled their accounts against

each other. **Hamilton**, 108/474, 34 S. E. 123.

Illegality of, may be shown in defense to suit on note. **Jones**, 112/427, 37 S. E. 729, 52 L. R. A. 271.

Inadequacy of; disproportion in price and value, when considered. **Collier**, 137/658, 74 S. E. 275, Ann. Cas. 1913A, 1110.

Inducing agreement to sell, proof of, how far admissible. **Hightower**, 126/8, 54 S. E. 939, 7 Ann. Cas. 927.

Of deed, evidence relevant as to. **Morehead**, 131/808, 63 S. E. 507.

Of deed, inquiry into. **Shackelford**, 135/30, 68 S. E. 838.

Of deed, recital as to, how far open to explanation. **Jewell**, 109/264, 34 S. E. 337. See **Jenkins**, 109/35, 34 S. E. 355.

Of note reciting value received, testimony as to, admitted. **First National Bank**, 108/540, 34 S. E. 143.

Of note sued on, illegal and immoral; admissibility of testimony. **Exchange Bank**, 139/260, 77 S. E. 36, 51 L. R. A. (N. S.) 549.

Of sealed instrument, admissibility of evidence as to. **Sivell**, 119/167, 170, 46 S. E. 67.

Testimony admissible on plea of failure of, that article sold would produce a stated result. **Wells**, 118/566, 45 S. E. 418. That jewelry was worthless and failed to come up to guaranty. **Johnson County Bank**, 118/927, 45 S. E. 705.

Testimony as to failure of, inadmissible in suit by bona fide purchaser of note before its maturity, without notice. **Jenkins**, 108/558, 34 S. E. 149.

Total failure of; defense met by evidence that alleged worthless machine had been repaired and successfully used since suit filed. **Toole**, 9 A. 757, 72 S. E. 270.

Value of currency and consideration provable in suit on contract made in 1863. **Commr's**, 108/559, 34 S. E. 351.

Relevancy of evidence tending to overthrow theory on defense as to.

Birmingham & Atlantic Air-Line R. Co., 101/183, 28 S. E. 534.

What testimony not admissible on issue as to failure of. **International Harvester Co.**, 135/105, 106, 68 S. E. 1093.

Considered most favorably to prevailing party, evidence is, on writ of error; and when not sufficient to support recovery. **Southern Ry. Co.**, 131/157, 62 S. E. 64.

Consistent statements; sustaining one by proof of like statements made by the same person at different times. **McBride**, 125/515, 54 S. E. 674.

Conspiracy and fraud, evidence of, admissible in action of assumpsit, for what purpose. **Cowart**, 137/586, 73 S. E. 822, Ann. Cas. 1913A, 932.

Admissibility and probative value of testimony as to. **Suttles**, 117/215, 43 S. E. 486.

Testimony objected to as hearsay was admissible in view of evidence as to conspiracy. **Goldberg**, 20 A. 163, 92 S. E. 957.

Prima facie shown; admissibility of acts and declarations of parties to it. **Coleman**, 141/731, 737, 82 S. E. 227, 228.

Proof of, should precede proof of declarations of conspirator. **McDaniel**, 103/270, 30 S. E. 29.

Acts and declarations of one conspirator pending the enterprise, admissible against others. **Carter**, 106/376, 32 S. E. 345; **Barrow**, 121/187, 48 S. E. 950.

Admissibility of acts, conduct, and sayings of conspirators while conspiracy in progress and after crime committed. **Rawlins**, 124/32, 52 S. E. 1.

Declarations, made after the crime, not admissible. **Hicks**, 11 A. 265, 75 S. E. 12.

Declarations of conspirators. **Slaughter**, 113/284, 38 S. E. 854, 84 Am. St. R. 242.

Sayings and conduct, and record of conviction of conspirators, admissible against each other. **Kirksey**, 11 A. 142, 74 S. E. 902.

Common purpose, responsibility of one for acts of another in further-

ance of. **Somers**, 116/535, 42 S. E. 779.

Conspiracy and joint participation in crime, correspondence of tracks bore upon. **Thomas**, 143/268, 84 S. E. 587.

Doubtful admissibility of conduct two weeks before homicide. **Andrews**, 145/14, 88 S. E. 194.

Letter admissible as tending to show. **Lynn**, 140/387, 79 S. E. 29.

May be proved by circumstantial, as well as by direct evidence. **Dixon**, 116/186, 42 S. E. 357; **Carter**, 141/308, 80 S. E. 995; **Coleman**, 141/734, 82 S. E. 228; **Weaver**, 135/317, 69 S. E. 488; **Kettles**, 145/7, 88 S. E. 197.

Testimony rendered admissible by subsequent proof of. **Sullivan**, 121/186, 48 S. E. 949; **Barrow**, 121/187, 48 S. E. 950.

To accomplish unlawfully, actionable. **Woodruff**, 2 A. 362, 58 S. E. 551.

To murder may be proved by circumstances. **Lynn**, 140/387, 79 S. E. 29. See **Short**, 140/780, 80 S. E. 8. **Constable's entry** apparently on Sunday, explained by his testimony that he made mistake in day of month. **Bray**, 112/364, 37 S. E. 370.

Constitutionality of statute, whether evidence as to its effect may be received on question as to. **Glover**, 126/609, 55 S. E. 592.

Construction of paper as deed or will, evidence in aid of. **Griffith**, 120/584, 48 S. E. 129.

Contempt, evidence introduced on hearing for, considered though no traverse of answer filed. **Ellis**, 134/287, 67 S. E. 819.

Hearing of evidence on trial for. **Carson**, 146/726, 92 S. E. 221.

In not paying alimony; evidence competent to rebut answer, without traversing it. **Beavers**, 148/506, 97 S. E. 65.

Contention of accused, admissibility of testimony of separate transaction to support. **Whitfield**, 2 A. 124, 126, 58 S. E. 385.

Continuance of a condition once shown to exist, presumption as to. **Marshall**,

20 A. 424, 93 S. E. 98; **Green**, 16 A. 580, 85 S. E. 815.

Contract as to what should be evidence as to a certain fact did not render such evidence conclusive. **Chapman**, 20 A. 215, 92 S. E. 964.

Between assignee of bond for title and obligor was admissible in suit by second transferee. **Hand Trading Co.**, 139/156, 76 S. E. 1022.

Evidence insufficient to prove. **McCoy**, 124/221, 52 S. E. 434.

Evidence material to issue of compliance with, when improperly rejected. **Hawkins**, 120/614, 48 S. E. 169.

Evidence as to illegality of contract. **Russell**, 14 A. 344, 80 S. E. 731.

Evidence of assent to. **Southern Express Co.**, 134/445, 449, 67 S. E. 944, 137 Am. St. R. 227.

Evidence relevant in defense of action for breach of, replying to allegation of breach of trust. **McCommons**, 131/313, 62 S. E. 230.

Express or implied, to pay for services, proof of allegations as to. **Jackson**, 132/54, 63 S. E. 823.

For services, admissibility of testimony in suit on. **Belcher**, 135/73, 68 S. E. 839.

Implied, admissibility of evidence to prove, in suit to recover for child's service to parent. **Howard**, 134/691, 68 S. E. 586, 29 L. R. A. (N. S.) 294, 20 Ann. Cas. 392.

Intent of maker illustrated by another contract. **White**, 17 A. 551, 87 S. E. 831.

In writing, evidence did not show. **Grant**, 134/644, 68 S. E. 422.

Modification of, admissibility of evidence as to. **Cleckley**, 117/466, 43 S. E. 725.

Oral testimony held incompetent in suit on, to show unreasonableness of contention. **Cogan Co.**, 145/5, 88 S. E. 418.

Provable; purpose in making it, when not admissible. **Fidelity Co.**, 130/226, 60 S. E. 851, 16 L. R. A. (N. S.) 994.

Public reading and explanation of, not admissible, defendants not appear-

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ing to have been present or connected with the transaction. **Chicago Building & Co., 139/816, 78 S. E. 244.**

Relating to distinct transaction, irrelevant on trial of suit on other contract. **Inman, 116/63, 42 S. E. 473.**

Relevancy of evidence on issue of legality of; what not admissible. **Richter, 143/470, 85 S. E. 319; Reeves, 143/569, 85 S. E. 756.**

Subsequent recognition of, by one party, when admissible. **Hightower, 126/8, 54 S. E. 939, 7 Ann. Cas. 927.**

To buy cotton was never made "with any man," except in writing; testimony objectionable. **Stewart, 132/422, 64 S. E. 471.**

To deliver cotton, admissibility of testimony in action for breach of. **Ford, 133/237, 238, 65 S. E. 444.**

To furnish goods for sale, testimony of failure to furnish them, when irrelevant to case as laid. **Mathis, 1 A. 353, 58 S. E. 207.**

To make specific devise, testamentary capacity and undue influence irrelevant in action on. **Gordon, 145/682, 89 S. E. 749.**

To surrender possession of land sold, admissible in suit by vendee's successor. **Prichard, 104/64, 30 S. E. 415.**

When not competent to show non-compliance with, in defense to suit on stock subscription. **Bailey, 142/11, 12, 82 S. E. 290.**

Words spoken in conversation which made the contract, admissible. **Noble, 124/963, 53 S. E. 463.**

Written; admissibility of testimony in trial of suit on. **Alabama Construction Co., 131/365, 62 S. E. 160.**

Contradiction by party of his testimony on former trial. **Phoenix, 113/432, 38 S. E. 992.** Contradictory of statement in letter from witness, which plaintiff had introduced, not excluded. **Walls, 141/594, 81 S. E. 866.**

Of party's own witness, allowed. **Christian, 120/317, 47 S. E. 923; Turner, 120/483, 48 S. E. 312; Moultrie Co., 120/730, 48 S. E. 143.**

Contradictory pleas, as affecting credibility of party as witness. **Rucker, 6 A. 361, 65 S. E. 55.**

Contradictory statements previously made may be shown though witness does not remember making them. **Waycaster, 136/95, 70 S. E. 883.**

Denied on cross-examination, when no new trial for excluding testimony of. **Jones, 137/21, 72 S. E. 410.**

Error in requested charge as to effect of. **Sims, 5 A. 850, 851, 64 S. E. 99.**

Proof of, not evidence of facts stated therein. **Luke, 4 A. 538, 62 S. E. 110; Atlantic R. Co., 5 A. 783, 63 S. E. 1126.**

Right of witness to explain. **Ga. Ry. & C. El. Co., 4 A. 614, 62 S. E. 158.**

Contribution by cosurety, admissibility of notes and testimony in connection therewith. **Varn, 142/243, 82 S. E. 641.**

Controversy as to testimony already given, how settled. **Fort, 3 A. 448, 60 S. E. 282.**

Conversation in absence of person whom it is sought to hold liable, when receivable. **Baird, 137/482, 73 S. E. 632.**

Between attorneys, in absence of party, when not admissible to bind him. **Cable Co., 118/913, 45 S. E. 787.**

Not within *res gestæ*, receiving part of, gave no right to introduce all. **Horton, 110/740, 35 S. E. 659.**

Overheard, between husband and wife, not inadmissible because she is not competent to explain or deny. **Ford, 124/793, 53 S. E. 335.**

Part introduced, other relevant parts admissible on cross-examination. **Glasco, 137/336, 73 S. E. 578.**

Statement admitted as part of. **Smith, 23 A. 541, 99 S. E. 142.**

Parts not *prima facie* relevant, admitted because interwoven with relevant parts. **Holcombe, 5 A. 48, 62 S. E. 647.**

Party can not testify to, which was out of hearing of opposing party. **McElroy, 142/38, 82 S. E. 442.**

To show state of mind, when admissible on trial for homicide. **Strickland, 137/115, 72 S. E. 922.**

Uncertainty as to language used, no ground for excluding testimony as to

what was said. *Holcombe*, 5 A. 54, 62 S. E. 647.

Witness may be allowed to relate such part of, as he heard. *Lynn*, 140/387, 79 S. E. 29.

Conversion, evidence in defense to action for, held not admissible. *Jones*, 137/638, 639, 74 S. E. 59.

Conviction of offense different from that for which accused is being tried, when State not allowed to prove. *Gay*, 115/204, 41 S. E. 685.

Of principal thief, *prima facie* evidence on trial of one accused of receiving stolen goods. *Snow*, 5 A. 608, 63 S. E. 651.

On testimony of one witness, except in what cases. *Roberts*, 138/816, 76 S. E. 361.

Copy of account; admissibility of book-keeper's testimony as to correctness of. *Dougan*, 115/1012, 42 S. E. 390.

Coroner should not examine as witness at inquest a prisoner charged with having killed the deceased. *Adams*, 129/250, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158.

Evidence on inquest, not admissible, on trial of civil case, to prove cause of death. *Sovereign Camp*, 23 A. 760, 99 S. E. 319.

Verdict on inquest may be part of proof of death; but is not evidence as to cause of death. *Supreme Council*, 23 A. 104, 97 S. E. 557.

Corporation officers; issue whether bank became bound by representations in sale of stock. *Brown Bank*, 143/52, 84 S. E. 183.

Received and used money from transfer of property; fact admissible though transfer unauthorized. *Bank*, 138/799, 76 S. E. 95.

Officer, authority of, to sell property; how to be proved. *Brown*, 132/41, 63 S. E. 788.

Officer received no salary, irrelevant in suit by his successor to recover salary. *Gem Knitting Mills*, 140/15, 78 S. E. 408.

Corpus delicti, proof of, as corroboration. *Wimberly*, 105/188, 31 S. E. 162; *Davis*, 105/809, 32 S. E. 158.

Not required to be proved before the introduction of other evidence against the accused. *Williams*, 123/188, 51 S. E. 322.

May be proved by circumstantial evidence. *Miles*, 129/589, 59 S. E. 274.

Character of proof necessary. *Lester*, 106/372, 32 S. E. 335.

Corroboration, declarations admissible for, that would not be received to prove the main fact. *Ham*, 2 A. 71, 58 S. E. 316; *Davidson*, 2 A. 432, 58 S. E. 687, 688.

Concurrent circumstances and facts of; and when not essential to legal conviction. *Parker*, 3 A. 336, 59 S. E. 823; *Scott*, 3 A. 479, 60 S. E. 112.

Evidence not originally admissible, admitted in corroboration. *Harper*, 13 A. 238, 79 S. E. 44.

In case of impeachment. *McAllister*, 7 A. 541, 542, 67 S. E. 221. In perjury case. *Davis*, 7 A. 686, 67 S. E. 839.

Of accomplice. *Baker*, 121/189, 48 S. E. 967; *Harrell*, 121/607, 49 S. E. 703.

Of accomplice, charge of court as to, considered. *Ballard*, 11 A. 103, 74 S. E. 846.

Of accomplice, necessary. *Yother*, 120/204, 47 S. E. 555. Of female raped. *Davis*, 120/433, 48 S. E. 180. Of confession, by proof of corpus delicti. *Morgan*, 120/499, 48 S. E. 238.

Of accomplice, rule as to, not applied to one who had information to intent to commit crime and afterward concealed it. *Bradley*, 2 A. 622, 58 S. E. 1064.

Of alleged victim of rape, not to be charged on, if the other evidence tends to impeach and not to corroborate her. *Coney*, 108/773, 36 S. E. 907.

Of female in rape case, whether necessary; instruction as to what sufficient. *Vanderford*, 126/759, 55 S. E. 1025.

Of prosecutrix, letter of accused admissible for. *Powers*, 138/624, 75 S. E. 651.

Of testimony in rape case. *Jeffers*, 145/74, 88 S. E. 571.

Corroboration—(Continued).

Of testimony of one jointly indicted with accused on trial, not required, if no testimony that he is accomplice. **Davis**, 122/564, 50 S. E. 376.

Of testimony of raped female. **Lane**, 140/222, 78 S. E. 837.

Of testimony of witness who made contradictory statements. **Waycaster**, 136/95, 70 S. E. 883.

Of thief, conviction of receiving stolen goods, without. **Springer**, 102/451, 30 S. E. 971.

Of witness's explanation of previous false testimony, what inadmissible for. **Kelly**, 145/210, 88 S. E. 822.

Required, of evidence of ill repute of house. **Jones**, 2 A. 433, 58 S. E. 559; **McConnell**, 2 A. 445, 58 S. E. 546.

Of accomplice, what necessary. **Milner**, 7 A. 82, 66 S. E. 280; **Smith**, 7 A. 781, 68 S. E. 335. Not essential in misdemeanor case. **Beaty**, 7 A. 328, 66 S. E. 808.

Of accomplice, what necessary. **Bishop**, 9 A. 205, 70 S. E. 976. Corroboration in bastardy case, not necessary as to prosecutrix's testimony. **Kennedy**, 9 A. 226, 70 S. E. 986.

Of accomplice, when necessary. **Jennings**, 13 A. 680, 79 S. E. 756.

Of defendant's statement, by unimpeached witness, carried burden of explanation here. **Bray**, 5 A. 605, 63 S. E. 596.

Testimony inadmissible in, showing how witness could not truthfully have made the affidavit he says he did not make. **Chapman**, 131/805, 806, 63 S. E. 337.

Corroborative of testimony, books of account received as. **Bush**, 3 A. 43, 59 S. E. 459.

Corroborative of testimony of prosecutor in robbery, that woman with whom accused was intimate was found in possession of stolen watch. **Clay**, 122/136, 50 S. E. 56.

Corroborative testimony admitted, where not admissible for other purposes. **Hartz**, 13 A. 401, 79 S. E. 230.

Cost admissible as tending to show value. **Great American Fire Asso.**, 11 A. 785, 787, 76 S. E. 159; **Morrow Transfer Co.**, 8 A. 409, 69 S. E. 317; **Allen**, 113/107, 38 S. E. 322; **Southern Ry. Co.**, 113/836, 38 S. E. 744.

Cotton short in weight and inferior in grade, admissibility of testimony to show. **Ford**, 14 A. 318, 80 S. E. 696.

Counter-evidence not produced; rule as to unfavorable inference, when not apply. **Southern Express Co.**, 126/472, 55 S. E. 254.

County line, report defining, by commissioners appointed by inferior courts, not under oath, inadmissible. **Daniel**, 118/408, 45 S. E. 379.

Course of dealing, agency may be proved by. **Bush**, 3 A. 49, 59 S. E. 459; **Fitzgerald Co.**, 3 A. 212, 59 S. E. 713.

Actual facts shown by, override declared contemplation of parties. **Anderson**, 2 A. 1, 58 S. E. 401.

As affecting right of depositor to draw against amount of check deposited. **Baldwin State Bank**, 144/181, 86 S. E. 538. See **Spooner**, 144/745, 87 S. E. 1062.

Evidence to show former compliance with law, not admitted. **S. A. L. Ry.**, 23 A. 74, 97 S. E. 549.

In preceding years, as to payment of rent, admissible as tending to illustrate contract for year in question. **Burgamy**, 22 A. 724, 97 S. E. 199.

As to premium money paid to insurance agent, admissibility of, in suit on policy. **Rome Ins. Co.**, 142/253, 82 S. E. 641.

Implication from, as to agent's authority. **Noble**, 124/960, 964, 53 S. E. 463.

As evidence of authority to buy on credit for another. **Conyers**, 111/754, 36 S. E. 947.

Credibility, letter written by witness two years before, as affecting. **Reeves**, 140/101, 78 S. E. 717.

Credit extended on faith of husband's ownership; admissibility of testimony in contest with wife. **Taylor**, 139/797, 77 S. E. 1062.

Creditor's failure to sue one and suing another instead, because the latter admitted liability, when admissible to show estoppel. *Wolff*, 105/153, 31 S. E. 425.

Crime, admissibility of fact connected with commission of; not of collateral fact. *Hart*, 141/672, 81 S. E. 1108.

Charged in language of statute defining complete offense, proof need not cover negative of exception in other statute. *Hicks*, 108/749, 32 S. E. 665.

Impeachment by proof of conviction of, not allowed as to offense not involving moral turpitude (liquor-selling). *Edenfield*, 14 A. 401, 81 S. E. 253.

In obtaining evidence, no reason for its exclusion. *Brooks*, 19 A. 9, 90 S. E. 989; *Vittilard*, 20 A. 84, 92 S. E. 554; *Smith*, 17 A. 693, 88 S. E. 42; *Calhoun*, 17 A. 705, 88 S. E. 586.

Other than that charged, inadmissibility of evidence as to. Rule and exceptions. *Frank*, 141/243, 80 S. E. 1016; *Alsobrook*, 126/100, 54 S. E. 805.

Other than that for which accused is on trial, admissibility of evidence as to. *Cawthon*, 119/396 46 S. E. 897; *Ray*, 4 A. 70, 69 S. E. 316; *Thompson*, 4 A. 469, 62 S. E. 99; *Martin*, 10 A. 795, 74 S. E. 304; *Goldberg*, 20 A. 163, 92 S. E. 957; *Griffin*, 18 A. 462, 89 S. E. 537; *Bates*, 18 A. 718, 719, 90 S. E. 481; *McDuffie*, 17 A. 343, 86 S. E. 821; *Cooper*, 13 A. 697, 79 S. E. 908; *Webb*, 7 A. 37, 66 S. E. 27; *Clarke*, 5 A. 95, 62 S. E. 633. Admissible testimony as to similar crime (theft) in same building on same occasion. *Hall*, 7 A. 120, 66 S. E. 390. Error in admitting testimony as to, harmless. *Griffin*, 15 A. 552, 83 S. E. 871; *Smith*, 15 A. 714, 84 S. E. 159. Effect of evidence as to former criminal transactions. *Taylor*, 5 A. 237, 62 S. E. 1048; *Denham*, 5 A. 303, 63 S. E. 62.

Previously attempted, admissibility of evidence as to, on trial for crime. *Sullivan*, 121/186, 48 S. E. 949.

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Criminal acts preceding that charged, error in admitting evidence as to. *Hawkins*, 6 A. 109, 64 S. E. 289. Rule as to inadmissibility of, discussed. *Robinson*, 6 A. 711, 65 S. E. 792.

Criminal offense, not proved by, unless allegations of indictment so warrant. *Hudson*, 104/723, 30 S. E. 947.

Criminal relations between man and woman, when may be proved, to show motive. *Barrow*, 121/187, 48 S. E. 950.

Criminal violence, statement made or facts discovered in consequence of, not admissible. *Goolsby*, 133/427, 66 S. E. 159.

Crimination of self, not compelled. If arrest legal, evidences of guilt found on person, may be used as evidence against him; if illegal, not. *Evans*, 106/519, 32 S. E. 659.

No error in refusing to require witness to answer question tending to. *Stallings*, 136/131, 70 S. E. 1015.

Admissibility of evidence not furnished by accused, but illegally taken from him. *Calhoun*, 144/679, 87 S. E. 893.

Admissibility of evidence obtained by arresting officer's search of person. *Hill*, 8 A. 77, 68 S. E. 614.

Document in defendant's possession treated as inaccessible; secondary evidence of contents admitted. *Kinsey*, 12 A. 422, 77 S. E. 369; *Sellers*, 12 A. 687, 78 S. E. 196; *Nalley*, 11 A. 19, 74 S. E. 567.

Incompetent to show that witness had declined to answer questions on ground of. *Loewenherz*, 144/557, 87 S. E. 778.

Rule that accused can not be forced to; when not violated by admitting evidence discovered by searching him. *Dozier*, 107/709, 33 S. E. 418; *Springer*, 121/155, 157, 48 S. E. 907.

Not compelled; but voluntary answer to question received in subsequent trial of the witness. *Davis*, 122/564, 50 S. E. 376.

Not compelled. Leaving it optional with witness to answer question, no

Cross-examination—(Continued).

error. *Wilburn*, 141/510, 81 S. E. 444. Testimony of voluntary confession not excluded. *Ib.*

Not compelled. This provision distinct from that as to unlawful search and seizure. *Smith*, 3 A. 326, 59 S. E. 934.

Privilege of witness not to criminate self, not relieve party from presumption arising from failure to call witness. *Williamson*, 9 A. 444, 71 S. E. 509.

Rule as to, does not exclude evidence procured by illegal search. *Duren*, 125/1, 53 S. E. 814.

Testimony not admissible in violation of constitutional guaranty against. *Elder*, 143/363, 85 S. E. 97.

Under compulsion; objection not sustained as to arresting officer's testimony that at his direction the defendant unlocked a door and thus disclosed evidence against himself. *Hernodon*, 10 A. 119, 72 S. E. 930.

Cross-examination, answer on, may be excluded on motion of party eliciting it, if witness incompetent so to testify. *Bishop*, 124/294, 52 S. E. 743. Interruption of, by court, when no harmful error. *Chandler*, 124/821, 53 S. E. 91.

Abridgment of right of, and refusal to allow repetition, discretion of court as to extent of examination, *Martin*, 15 A. 496, 83 S. E. 872.

Abridgment of right of, harmless, in view of subsequent proof of facts sought to be elicited thereby. *Orr*, 8 A. 60, 68 S. E. 779.

Abstract question disallowed, in view of evidence introduced on the same subject. *Hagood*, 5 A. 80, 62 S. E. 641.

As to character, not unduly restricted. *Hagood*, 5 A. 85, 86, 62 S. E. 641.

As to land values, propriety of questions on. *Flemister*, 140/512, 516, 79 S. E. 148.

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Discretion to refuse to allow questions repeated, already fully answered. *McLeod*, 108/790, 33 S. E. 851.

Error in abridging right of. *Becker*, 133/864, 67 S. E. 92.

Exception to refusal to allow question on, should show that the judge was informed of the probable answer. *G., F. & A. Ry. Co.*, 15 A. 152, 82 S. E. 784.

Extent of right of. *Atlantic R. Co.*, 127/806, 56 S. E. 1006, 9 L. R. A. (N. S.) 769, 9 Ann. Cas. 553.

Importance of. *Robertson*, 132/312, 64 S. E. 73.

Interference with, by judge. *Andrews*, 118/4, 43 S. E. 852.

Lack of opportunity for, as reason for admitting testimony of statements of deceased attesting witness. *Mobley*, 134/125, 133, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1004.

Latitude of, does not include irrelevant and prejudicial matter. *Ga. Ry. &c. Co.*, 133/622, 66 S. E. 944.

Matters developed on, no basis for allowing other side to prove statement. *Strickland*, 6 A. 537, 65 S. E. 300.

May cover all points, though direct examination went to but one. *Ficken*, 114/970, 41 S. E. 58.

May rebut inference supporting plaintiff's claim, drawn from direct examination. *Evans*, 120/961, 48 S. E. 358.

Not to be materially abridged. *Holt*, 2 A. 384, 58 S. E. 511.

Not waiver of objection to illegal testimony, when. *Howard*, 18 A. 6, 89 S. E. 443.

Of defendant in criminal case, waiver of objection to. *Frazier*, 14 A. 109, 80 S. E. 209.

Of witness by judge, and statement to jury as to his testimony, when erroneous. *Grant*, 122/740, 50 S. E. 946; compare *Johnson*, 122/670, 50 S. E. 488.

Pertinency of question on, though not admissible to prove main fact. *Siniard*, 145/541, 89 S. E. 517.

Cross-examination—(Continued).

Prisoner can not be subjected to, by his answering question that his counsel asks without right to do so. *Walker*, 116/537, 42 S. E. 787, 67 L. R. A. 426.

Matters developed on, no basis for proving specific acts. *Fountain*, 23 A. 118, 98 S. E. 178.

Question on, repelled, counsel must state to court what he desires to prove by expected answer. *Jackson*, 1 A. 724, 58 S. E. 272.

Refusal of court to require witness to answer as to whether he had just made a certain statement, not cause new trial here. *Jones*, 117/326, 43 S. E. 715.

Refusal to require party to give categorical answer, when no error for reversal. *Phinizy*, 135/678, 70 S. E. 243.

Relevancy of question on, to attorney testifying for his client. *Dale*, 141/595, 81 S. E. 849.

Right of, in defendant who has defaulted in pleading to suit for unliquidated damages. *Pittman*, 120/341, 47 S. E. 948.

Right of, not subject to rule of stating what answer to question is expected. *Tillman*, 134/661, 68 S. E. 504.

Right of, should not be abridged. *Boyett*, 16 A. 150, 84 S. E. 613.

Right of; when great latitude should be allowed; questions within proper limit. *Atlanta Ry. Co.*, 1 A. 302, 58 S. E. 258.

Scope of, as to former testimony. *Taylor*, 110/151, 35 S. E. 161.

Of female alleged to have been raped, erroneously restricted. *Huff*, 106/432, 32 S. E. 348.

That defendant's witnesses contributed to fund to abate nuisance, incompetent on. *Godwin*, 120/747, 48 S. E. 139.

Thorough and sifting, to be allowed. *Alabama Construction Co.*, 131/365, 62 S. E. 160; *Walker*, 6 A. 61, 64 S. E. 310.

Cruel treatment, admissibility of evidence offered to show, in divorce case. *Smith*, 119/239, 46 S. E. 106.

Dishonesty of husband toward his employer not admissible to illustrate. *Anglin*, 145/822, 90 S. E. 73.

Cruelty to wife, testimony of, as tending to show malice and motive for slaying her. *Josey*, 137/770, 74 S. E. 282.

Cumulative evidence, exclusion of, when not cause for new trial. *White*, 113/579, 38 S. E. 944.

Custody of child, admissibility of evidence in contest for, on habeas corpus. *Milner*, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977.

Evidence of changed conditions since former award, admissible. *Kennedy*, 127/80, 56 S. E. 243, 9 Ann. Cas. 936.

Evidence of fitness limited to matters since decree awarding. *Milner*, 139/109, 76 S. E. 860.

Evidence of grandparent's fitness for, when irrelevant on parent's application. *Kennedy*, 127/81, 56 S. E. 243, 9 Ann. Cas. 936.

Custom, admissibility of evidence as to, as affecting contract. *Cartersville Grocery Co.*, 17 A. 42, 86 S. E. 402.

Admissibility of proof of, to show whether due care was exercised by bailee. *Arrington*, 117/450, 43 S. E. 691, 97 Am. St. R. 169.

As affecting contract; admissibility of testimony as to. *Potts*, 22 A. 498, 96 S. E. 502.

As to manner of flagging trains, and instructions to flagmen, when admissible. *Jackson*, 140/277, 78 S. E. 1059.

At variance from terms of written contract, not admissible. *Albany Ry. Co.*, 137/391, 73 S. E. 637; *Proctor Co.*, 137/407, 73 S. E. 378.

Can not change the law. Evidence of custom of surety companies in dealing with their principals, when not admissible. *Fidelity Co.*, 130/226, 60 S. E. 851, 16 L. R. A. (N. S.) 994.

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Conflict of evidence as to existence of, touching commissions of real-estate brokers. *Little*, 140/214, 78 S. E. 842.

Evidence as to, as affecting contract. *Hamby*, 14 A. 515, 81 S. E. 593; *Louisiana Red Cypress Co.*, 13 A. 472, 79 S. E. 379; *Rochelle Gin Co.*, 13 A. 621, 79 S. E. 584.

As affecting contract; sufficiently pleaded, to authorize evidence of it. *Matthews*, 23 A. 676, 99 S. E. 308.

"General use," not shown by evidence as to use by "three concerns." *Mitchell*, 16 A. 686, 85 S. E. 978.

Not established by testimony of three merchants that it was customary for a carrier to notify them of arrival of perishable goods, and by testimony of former employees of that carrier that they "usually" gave such notice. *S. A. L. Ry.*, 14 A. 711, 82 S. E. 59.

Obviously dangerous, proof of, not received in action for negligence. *Pickett*, 138/179, 180, 74 S. E. 1027, *Ann. Cas.* 1913C, 1380.

Of architects not to guarantee exact cost of building, but only to make approximate estimate; testimony admissible as to. *Douglas*, 10 A. 486, 73 S. E. 700.

Of business or trade, rule as to. *Brown*, 108/759, 33 S. E. 62.

Of carrier's agents, inadmissibility of testimony as to. *Southern Ry. Co.*, 139/332, 337, 77 S. E. 147, 43 L. R. A. (N. S.) 806.

Of carriers must be taken by consignee as it exists. *Seaboard Air-Line Ry.*, 140/804, 79 S. E. 1118.

Of employees, admissibility of evidence as to. *Georgia Railroad*, 12 A. 295, 303, 77 S. E. 176.

Of gang working on railroad bridge, as to protection of trains, when not admissible. *Nashville Ry.*, 134/618, 68 S. E. 432.

Of local brokers, not binding on non-resident shipper, unless he know of and consent to it. *Bacon Co.*, 122/369, 50 S. E. 139. *Universal*, raises

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what presumption. *Moultrie Co.*, 122/27, 49 S. E. 729.

Of passenger to deliver railroad check for baggage to agent of transfer company, not competent. *Bridges*, 137/108, 72 S. E. 892.

Of railroad conductors to afford special assistance to female passengers, when not admissible. *Southern Ry. Co.*, 118/228, 45 S. E. 23.

Of car-coupler to couple without stick, in violation of rule, though known to conductors, not admissible. *Binion*, 118/282, 45 S. E. 276.

Of railroad engineers as to displaying signals, when admissible. *Central Ry. Co.*, 118/833, 45 S. E. 680.

Of railroad trains to receive passengers in an unusual way, when not admissible. *Atl. R. Co.*, 118/288, 45 S. E. 271.

Of sales agent to sign names of both parties to contract, not admissible. *Happ Co.*, 145/837, 90 S. E. 61.

Of servants to violate rule, acquiesced in by master, does not absolve servant from negligence in so violating. *Chat. R. Co.*, 112/237, 37 S. E. 439.

Of trade, not admissible to vary terms of unambiguous contract. *Branswig*, 11 A. 9, 74 S. E. 448.

Proof of custom of trade, as to interpretation of term of description. *Kirby Planing-Mill Co.*, 11 A. 645, 75 S. E. 1059.

Of trade, proof of, to show consent or ratification. *Sparks*, 104/323, 30 S. E. 823.

Of trade, that possession of bill of lading indorsed in blank is evidence of right to dispose of goods. *Com. Bank*, 120/74, 47 S. E. 589, 65 L. R. A. 443.

Of business usage, of no benefit to him who did not contract with reference thereto. *Hendricks*, 118/131, 44 S. E. 835; *McCall*, 118/522, 45 S. E. 442.

Of course of dealing, for firm to draw its check to pay individual debts of partners, irrelevant in suit on note of partnership for partner's debt. *People's Bank*, 114/188, 39 S. E. 920.

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Or habit as to boarding moving cars, and experience showing it safe for plaintiff to do so, rejected. *Small*, 118/901, 45 S. E. 706, 63 L. R. A. 510.

Or habit of passengers, known and consented to by carrier, admissible on issue of negligence. *Pickett*, 138/177, 74 S. E. 1027, Ann. Cas. 1913C, 1380.

Or practice, admissibility of. *Stewart*, 132/424, 64 S. E. 471.

Or usage, admissibility of, in action on contract; positive law not changed. *Happ Co.*, 145/837, 90 S. E. 61.

Or usage, not excluded by contract, may be proved in defense. *Lauchheimer*, 126/265, 55 S. E. 55.

Or usage not proved, estimate based on, not received. *Howell*, 139/442, 77 S. E. 564.

Or usage of a business may be proved, to illustrate authority of agent. *Hopkins*, 8 A. 442, 69 S. E. 580.

Or usage of banks as to collection of checks deposited, admissible. *Youmans Jewelry Co.*, 141/357, 80 S. E. 1005.

Or usage of business as to time for performance of contract of service. *Beck*, 108/242, 33 S. E. 894.

Or usage of passengers to go across platforms of moving coaches, competent for what purpose. *Auld*, 136/267, 71 S. E. 426, 37 L. R. A. (N. S.) 518.

Or usage of warehouse, competency of testimony to show; especially as to insurance of cotton. *Farmers Gin-nery*, 144/599, 87 S. E. 804.

Or usage, that bale of cotton weighs 500 pounds. *Watson*, 128/300, 56 S. E. 459.

At variance with contract, error in admitting testimony as to. *Patapsco Shoe Co.*, 10 A. 676, 678, 74 S. E. 60.

Practice, or usage, cannot override positive enactment of law. *Loganville Banking Co.*, 143/304, 84 S. E. 961, L. R. A. 1915D, 1195.

To sell reduced-rate tickets, abandonment of, evidenced by closing ticket-office. *Johnson*, 108/496, 34 S. E. 127.

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Universal, authorizing traveling salesmen to sell their samples at end of the season. *Lauchheimer*, 126/265, 55 S. E. 55.

Proof of, insufficient here. *Ga. & Ala. Ry.*, 111/6, 36 S. E. 312. Customary mode of conducting business in railroad yard, admissibility of proof as to. *Seaboard Ry.*, 117/99, 43 S. E. 494. Customary mode of work, admissibility of proof as to. *Merchants & Miners Trans. Co.*, 4 A. 663, 62 S. E. 130. Customary precautions, when not admissible, on question as to due care. *Atlanta Ice Co.*, 126/457, 55 S. E. 237. Customary rate charged by lender, usurious; admissibility of evidence as to. *Jones*, 7 A. 539, 67 S. E. 280. Customary compensation for services, evidence as to, not admissible, where the suit was on an express contract for a fixed amount. *Walker*, 21 A. 563, 94 S. E. 835. Customary wages admissible, where an element of damages alleged was decrease of earning capacity. *Camilla Cotton Oil Co.*, 21 A. 603, 94 S. E. 855.

Damages by abuse of process; plaintiff's testimony of value of goods and amount of damage admissible, defendant being dead. *Morris*, 2 A. 61, 58 S. E. 316.

By change of street grade, what testimony relevant in suit for. *Mayor &c. of Americus*, 3 A. 159, 59 S. E. 434.

By diminution of earning capacity shown by loss of fingers. *O'Neill Co.*, 110/579, 36 S. E. 59.

By failure to furnish cars for shipping fruit; what testimony proper. *Armour*, 110/403, 35 S. E. 787.

By sewer or drain, how measured. *Langley*, 118/591, 45 S. E. 486, 98 Am. St. R. 133.

Consequential on raising street grade; evidence of payment for paving irrelevant in reply to defense of enhancement. *Burns*, 144/480, 87 S. E. 414.

Consequent on taking land by condemnation, elements proper for con-

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sideration in estimating. **Potts**, 140/431, 79 S. E. 110; **Flemister**, 140/513, 79 S. E. 148.

Evidence admissible to show; as, cost of filling lot to changed grade of street. **Mayor &c. of Macon**, 2 A. 359, 58 S. E. 540.

Evidence admissible under true rule for measuring, on breach of contract, though petition allege wrong measure. Aliter as to illegal claim not demurred to. **Ford**, 120/708, 48 S. E. 180.

Ex contractu, not waived by letter that purchaser will make first payment on arrival of goods. **Alabama Construction Co.**, 131/365, 62 S. E. 160.

Exemplary, motive actuating tort admissible in suit for. **L. & N. R. Co.**, 139/456, 77 S. E. 638.

Expenses of medical treatment, etc., recovery of, where no opinion of reasonableness expressed. **Gal. Ry. Co.**, 138/598, 75 S. E. 664.

From change of grade, evidence as to diminution of, by changes to be made by city under contemplated general plan, not admissible. **Eates**, 103/780, 30 S. E. 246.

From closing of street and erecting viaduct; relevant evidence as to decrease of market value of property. **Central Ry. Co.**, 145/149, 88 S. E. 676. See **City of Newnan**, 145/380, 89 S. E. 336.

From condemnation of railroad right of way, what admissible in assessing. **Savannah Ry. Co.**, 133/679, 66 S. E. 942.

From conversion and from negligence; distinction as to proof. **Citizens Bank**, 132/775, 65 S. E. 81.

From diminished capacity to labor, admissibility of testimony as to. **Atlanta &c. R. Co.**, 133/231, 65 S. E. 437.

In suit by minor. **W. & A. R. Co.**, 139/493, 77 S. E. 576.

From fire loss, cost of renting other building, not admissible as part of. **City of Dublin**, 142/840, 83 S. E. 939.

From nuisance; degree of specification required in pleading, to admit evidence. **Central of Georgia Power**

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Co., 141/172, 186, 191, 80 S. E. 636, 642, 645.

From permanent injury; admissibility of mortality and annuity tables. **L. & N. R. Co.**, 135/222, 69 S. E. 870.

General estimate of, objectionable; but stating total of items testified to in detail, allowable. **Neal**, 131/702, 63 S. E. 221.

In contemplation of parties when supersedeas bond executed, testimony as to private understanding of parties in regard to, irrelevant. **Waycross R. Co.**, 119/983, 47 S. E. 582.

In excess of amount sued for, admissibility of testimony as to. **City Electric Co.**, 121/663, 49 S. E. 724.

Item of expense not pleaded as, error to admit evidence of. **Snowden**, 105/384, 31 S. E. 110.

Matters inadmissible in assessment of, for right of way for telegraph line. **Atlantic Ry. Co.**, 120/269, 48 S. E. 15, 1 Ann. Cas. 734.

Defendant in default may contest amount of, where not liquidated. **Pittman**, 120/341, 47 S. E. 948.

Matters in aggravation of, when not admissible without special averment. **Central Ry. Co.**, 122/646, 50 S. E. 473, 69 L. R. A. 119.

Measure of, not proved, no recovery of actual, but of nominal damages. **Bloom**, 116/784, 43 S. E. 54.

Mitigation of, in false imprisonment; admissibility of evidence affording reasonable suspicion of guilt. **Rogers**, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64, Ann. Cas. 1914A, 1017.

No error in allowing questions illustrating extent of injury. **L. & N. R. Co.**, 136/455, 71 S. E. 774.

On breach of contract, evidence as to items of, admissible after overruling of demurrer. **Hicks**, 142/524, 83 S. E. 115.

Physical symptoms proved to show. **Georgia Railway &c. Co.**, 133/621, 66 S. E. 944.

Physician's bill not proved as part of, unless they resulted from injury

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sued for. **Georgia Railway &c. Co.**, 133/622, 66 S. E. 944.

Proof of, by showing contractual liability. **Propeller Co.**, 124/480, 52 S. E. 766. Consequential, nature and extent, and data for estimate of, must be proved. **Postal Tel. Co.**, 124/747, 52 S. E. 803, 3 L. R. A. (N. S.) 333.

Punitive, admissibility of acts and sayings as basis to recover. **Sheftall**, 133/488, 66 S. E. 253, 27 L. R. A. (N. S.) 442.

Receipt in satisfaction of, to one of joint tort-feasors, discharges the other also. **Donaldson**, 102/40, 29 S. E. 135.

Remote and contingent; when female's fright by loud voices of negro men at night, in town, not admissible. **Central Ry. Co.**, 116/719, 42 S. E. 1024.

Schedule of wages of enginemen, and time-table, admissible in fixing amount of. **Atl. R. Co.**, 132/189, 63 S. E. 834.

Testimony of statements of former customers, when not admissible to show loss of profits. **Price**, 132/246, 64 S. E. 87, 22 L. R. A. (N. S.) 684.

To abutting property by change of street grade, etc., admissibility of evidence. **Nelson**, 138/252, 75 S. E. 245.

To business and property, defendant in default can not contest plaintiff's ownership. **Lenney**, 118/427, 45 S. E. 317. See **Southern Bell Tel. Co.**, 118/506, 45 S. E. 319.

To cattle; incompetent for plaintiff to testify that it would average so much. **Georgia &c. Ry. Co.**, 143/312, 85 S. E. 197.

To other property than that of plaintiff, admissibility of testimony as to, as tending to show cause. **Southern Ry. Co.**, 125/361, 54 S. E. 151.

To property; admissibility of evidence as to cost of repairs and as to rental value. **City of Macon** 113/1112, 39 S. E. 446.

Unliquidated, amount of, must be proved, though no plea or answer. **Palmer**, 2 A. 200, 58 S. E. 362.

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When difference in market value of goods at initial point considered in estimating. **Chattanooga R. Co.**, 133/127, 65 S. E. 285.

Date intended to be alleged in indictment, proof of, allowed, when. **Walker**, 12 A. 92, 96, 76 S. E. 762.

Mistakenly written in judgment, admissibility of testimony as to. **Meldrim**, 140/400, 78 S. E. 1089.

Strict proof of, not required in action on account for goods sold and delivered. **Buckeye Co.**, 122/290, 50 S. E. 66.

Variance as to, when not material. **Ashburn**, 8 A. 568, 70 S. E. 19.

When not necessary that date proved shall correspond with date alleged. **Southern Pine Co.**, 113/629, 38 S. E. 960.

Deaf defendant's right to have testimony communicated to him. **Ralph**, 124/81, 52 S. E. 298, 2 L. R. A. (N. S.) 509.

Death, and identity of heirs; when incompetent to prove witness's information from records, repute, etc. **Mobley**, 143/565, 85 S. E. 859.

Of plaintiff before trial wherein judgment rendered, competent as proof in behalf of claimant. **Harris**, 144/520, 87 S. E. 661.

Debt, payment as evidence of; not preclude from denying, when. **Drew**, 113/605, 38 S. E. 967.

Decedent's poverty, proof as to, in action for homicide, not admissible. **Brunswick R. Co.**, 113/842, 39 S. E. 551, 61 L. R. A. 13.

Dedication of land and acceptance in parol; relevant and irrelevant evidence. **Ellis**, 138/181, 182, 75 S. E. 99.

Of land for parks; evidence of intention and acceptance. **East Atlanta Land Co.**, 138/380, 75 S. E. 418.

Of street, by landowner's subdivision with acceptance and work by municipality. **Wade**, 136/89, 70 S. E. 880.

Testimony as to what "the public understood," excluded, when. **Bennett**, 111/847, 36 S. E. 461.

Default, as affecting defendant's right to cross-examine, introduce evidence, etc. **Bowman**, 16 A. 546, 85 S. E. 787.

Defense in; allegations taken as true. **Methodist Church**, 137/68, 72 S. E. 480.

Defense made by evidence, but not by plea. **Parsons**, 22 A. 279, 95 S. E. 1009.

Not good in law, motion to exclude evidence offered in its support, not prevented by failure to demur. **Halliday**, 128/639, 58 S. E. 169.

Stricken from pleading, evidence not heard to establish. **Tune**, 131/528, 62 S. E. 976.

Delay, complaint of, immaterial where time not of the essence of contract. **Gulfport Co.**, 135/198, 69 S. E. 160.

Explanation of, admissible; as to bringing suit. **Causey**, 143/8, 84 S. E. 58.

In carriage of fruit, matters for consideration on inquiry as to. **Ala. R. Co.**, 139/411, 77 S. E. 647, 45 L. R. A. (N. S.) 18.

In performing contract, admissibility of testimony as to. **Smith**, 113/77, 38 S. E. 312.

In suing, cause for, may be asked on cross-examination; not irrelevant. **Atlantic R. Co.**, 127/806, 56 S. E. 1006, 9 L. R. A. (N. S.) 769, 9 Ann. Cas. 553.

Delivery by plaintiff alleged, delivery by agent in his own name as owner could be proved, in suit against carrier. **Central R. Co.**, 117/832, 45 S. E. 223.

Constructive, proof of. **Culpepper**, 18 A. 182, 89 S. E. 161; **Lanier**, 18 A. 185, 89 S. E. 182.

Evidence showing authority for. **Barton**, 117/867, 45 S. E. 232.

Included in the term "executed," as used by attesting witness. **Brockett**, 18 A. 672, 90 S. E. 366.

Of deed, admissibility of testimony offered to show. **Chambers**, 113/344, 38 S. E. 848.

Of deed was actual, though grantee did not receive it until after death of grantor. **Puett**, 144/193, 86 S. E. 547.

Of deed, testimony admissible as to, from witness present at time of execution. **Brinkley**, 131/226, 62 S. E. 67.

Of package marked "whisky," admissibility of testimony as to. **Pitts**, 15 A. 436, 83 S. E. 673.

Demand, unnecessary to prove, to show breach of contract, where defendant admits prima facie case and assumes burden of proof. **Richter**, 143/470, 85 S. E. 319.

Demeanor of accused and of other person, allowance of proof as to. **Frank**, 141/243, 80 S. E. 1016.

Demurrer, failure to file, does not render evidence admissible in support of demurrable plea. **Preston**, 120/547, 48 S. E. 316.

Overruled, same ground of objection to evidence likewise overruled. **Tompkins**, 139/378, 77 S. E. 623.

Denial of identity, when admissible. **Johnson**, 120/135, 47 S. E. 510.

Descriptio personae, addition of "agent" after signature. **Burkhalter**, 127/438, 56 S. E. 631, 119 Am. St. R. 343. Compare **Rozier**, 127/295, 56 S. E. 428.

Descriptive marks additional to those alleged, when admissible. **Gibson**, 114/34, 39 S. E. 948.

Descriptive words on package, as evidence of contents. **Cassidy**, 10 A. 123, 72 S. E. 939; **Daniel**, 11 A. 800, 76 S. E. 162.

Of indictment, allegations and proof of. **Gilmore**, 118/300, 45 S. E. 226; **Thompson**, 118/332, 45 S. E. 410.

Desertion of wife, her testimony as to, may be met by her letter requesting husband not to see her. **McCord**, 140/170, 78 S. E. 833.

Detective's reason for concealing himself to watch for commission of crime; admissibility of prior remark of accused. **Strickland**, 12 A. 640, 77 S. E. 1070.

Devastavit, when not shown by judgment quando acciderint. **Richardson**, 103/741, 30 S. E. 573.

Devastavit vel non, admissibility of testimony on issue of. **Gordon**, 141/347, 80 S. E. 1007.

Difficulty or quarrel years before homicide, when not incompetent. *Horton*, 110/739, 35 S. E. 659.

Diligence extraordinary, what facts considered in determining as to exercise of. *Southern Ry. Co.*, 133/83, 65 S. E. 134.

Not shown by proving direction of superintendent. *Coweta County*, 4 A. 104, 60 S. E. 1018. See *Hobbs*, 4 A. 630, 62 S. E. 91.

Of flagman; admissibility of testimony of his instructions, knowledge, etc. *Jackson*, 140/277, 78 S. E. 1059.

Testimony of trainmen as to, consistent with other circumstances. *Wrightsville R. Co.*, 108/262, 33 S. E. 978.

Engineer's testimony as to how train moved off, admissible, to disprove statement that it moved off with a jerk. *Seaboard Ry.*, 125/197, 54 S. E. 69, 114 Am. St. R. 196.

Disagreement of jury as to, may be settled by having the stenographer to read it. *Green*, 122/169, 50 S. E. 53.

Discharge from bail process, matters relevant and irrelevant to issue on hearing for. *Tenn. Valley Co.*, 140/774, 79 S. E. 840.

Discovery from codefendant, prayed in answer to petition for interpleader; effect of response as evidence. *Perkins*, 107/835, 33 S. E. 705.

Discretion should be liberally exercised in behalf of allowing whole case to be presented. *Ellenberg*, 5 A. 392, 63 S. E. 240.

Dismissal of counter-affidavit left no case to be tried; error to allow plaintiff to introduce evidence and take verdict. *Yancey*, 129/788, 59 S. E. 777.

Disprove plea, admissibility of testimony to. *Propper*, 136/788, 72 S. E. 242.

Distraint on tenant merchant's removal of goods; inadmissibility and insufficiency of testimony. *Savannah Bank*, 142/447, 83 S. E. 137.

Distress warrant, competency of evidence in support of defense by counter-affidavit. *Hawkins*, 101/145, 28 S. E. 632.

Disturbing congregation at a church, shown by proof of misconduct at arbor

about 170 or 200 yards therefrom. *Minter*, 104/744, 30 S. E. 989.

Divorce, answer in suit for, is evidence in bigamy case, as admission by failure to deny marriage. *Oliver*, 7 A. 696, 67 S. E. 886.

Decree conditional (not to be absolute until after a stated time), not admitted. *Jackson*, 21 A. 823, 95 S. E. 631.

For cruel treatment; evidence admissible and incompetent to illustrate conduct. *Anglin*, 145/822, 90 S. E. 73.

Dog's conduct in following tracks, admissibility of evidence as to. *Fite*, 16 A. 22, 84 S. E. 485; *Aiken*, 16 A. 848, 86 S. E. 1076; *Aiken*, 17 A. 722, 88 S. E. 210.

Domicile, evidence of intention, etc., considered. *Knight*, 112/829, 38 S. E. 206.

Evidence on issue as to; and as to intent to change. *Smith*, 136/197, 201, 71 S. E. 158.

Omission to list property for taxation, when not pertinent on issue as to. *Worsham*, 144/711, 87 S. E. 1025.

Driving horse, issue of want of ordinary care in. *City of Dalton*, 139/557, 77 S. E. 790.

Drunkenness as affecting capacity to contract; what testimony admissible, and what not, to illustrate issue. *Hawkins*, 132/265, 63 S. E. 852, 131 Am. St. R. 190.

Habit of, when not admissible, on issue as to character. *Dunn*, 16 A. 9, 84 S. E. 488.

Of slayer, as illustrating quo animo, *Dunn*, 16 A. 9, 84 S. E. 488.

That accused appeared to have been drinking when carried to jail, admissible. *Robinson*, 130/362, 60 S. E. 1005.

Habit of drinking, etc., not shown by testimony of buying whisky two or three months before occurrence. *Perdue*, 135/279, 69 S. E. 184.

Duress, admissibility of evidence as to, in suit on note. *Hill*, 17 A. 107, 108, 86 S. E. 397.

Admissibility of testimony on issue whether conveyance was made by wife under. **Smith**, 143/837, 85 S. E. 1034.

Character for violence, as tending to show. **McLeod**, 128/17, 57 S. E. 83.

Evidence as to, rejected where party whose title was sought to be thereby invalidated had no notice of. **Hughie**, 105/368, 31 S. E. 109.

Of witness, admissibility of testimony as to. **Kimbrough**, 9 A. 301, 70 S. E. 1127.

Earning capacity, diminution of, value of plaintiff's services in occupation he was pursuing before injury, as showing. **Atlanta Con. St. R. Co.**, 103/333, 30 S. E. 41.

Evidence of diminution of, to be considered in estimating damages. **Atlanta R. Co.**, 133/231, 65 S. E. 437.

Illustrated by earnings at time of injury. **W. & A. R. Co.**, 15 A. 370, 33 S. E. 445.

Probable future increase of, when considered in estimating damages. **Central Ry. Co.**, 143/754, 85 S. E. 920.

Shown by proof of earnings from farm. **Wrightsville R. Co.**, 129/206, 58 S. E. 769.

Earnings, and prospects of increase; what admissible. **Central Ry. Co.**, 2 A. 808, 59 S. E. 81.

Of deceased servant, proof of, how far back extended. **Central R. Co.**, 112/923, 38 S. E. 365, 53 L. R. A. 210.

Of wife; admissibility of testimony by husband and others, in suit against executor of decedent. **Belcher**, 135/73, 68 S. E. 839.

That plaintiff had received, after injury, admissible to show capacity not destroyed. **Holland**, 134/678, 68 S. E. 555, 19 Ann. Cas. 1032.

Easement, testimony of statements of predecessor in title, while in possession, admissible to show he recognized existence of. **McElwaney**, 131/98, 62 S. E. 20.

Ejectment; admissibility of evidence. **Mitchell**, 134/383, 67 S. E. 1042; **Alaculsey Lumber Co.**, 146/310, 91 S. E. 104.

Election, absence of order calling. **Prima facie** case made; evidence not showing contrary. **Ray**, 148/203 (dissent, 204), 96 S. E. 209.

Call of, by ordinary, determined *prima facie* that petitioners were of class and number required. **Vornberg**, 143/111, 84 S. E. 370.

For bond issue by municipality; admissibility of evidence on validation proceeding. **Sewell**, 145/19, 88 S. E. 577.

Of remedy, reasons for, when irrelevant. **Rowe**, 3 A. 504, 60 S. E. 275.

Of widow to take child's part may be presumed from conduct or expressly shown; but negated by evidence here. **Farmers Banking Co.**, 112/301, 37 S. E. 447.

Embezzlement, circumstances tending to show guilt. **Bridges**, 103/21, 29 S. E. 859.

Emotion, admissibility of testimony as to appearance of. **Glover**, 15 A. 45, 54, 82 S. E. 602.

Employment offered at certain wages to servant after injury, admissibility and weight of testimony as to. **Holland**, 134/679, 68 S. E. 555, 19 Ann. Cas. 1032.

Admissibility of testimony of attempt and failure to procure, since injury. **Macon R. Co.**, 145/47, 89 S. E. 767.

Engine horse-power, inadmissibility of testimony relating to. **International Harvester Co.**, 135/105, 106, 68 S. E. 1093. See *Id.* 138/672, 75 S. E. 984.

Equitable defenses in court of limited jurisdiction must be sustained by evidence admissible in court of law. **Moore**, 101/100, 28 S. E. 836.

Error in admitting, *prima facie* prejudicial. **Smith**, 14 A. 611, 81 S. E. 817; **Hornsby**, 12 A. 696, 78 S. E. 267.

In admitting, not held harmless, where decision may have been affected. **Town of Pelham**, 131/325, 62 S. E. 186.

In admitting evidence of bad faith, etc., no cause for complaint, where no

Error—Continued).

amount allowed as damages. **Field**, 142/425, 83 S. E. 93.

In admitting, on hearing of application for temporary injunction, did not work reversal. **Dawson**, 109/394, 34 S. E. 668.

Slight, in admitting, not alone sufficient ground for reversal, especially where the verdict is well supported by evidence. **Moore**, 9 A. 496, 71 S. E. 808. Error in admitting, must be plain, to require reversal. **Kimbrough**, 9 A. 302, 70 S. E. 1127.

In admitting, when held harmless, and when not so held. **Park**, 141/681, 682, 81 S. E. 1105.

In admitting, when no cause for reversing judgment on rule against sheriff. **Broadway National Bank**, 135/722, 723, 70 S. E. 328.

In admitting, when not so material as to require new trial. **Hawkins**, 141/212, 80 S. E. 711; **Frank**, 141/243, 80 S. E. 1016; **Lane**, 141/425, 81 S. E. 125; **Dale**, 141/595, 81 S. E. 849; **Carter**, 2 A. 255, 58 S. E. 352. Verdict demanded, error no ground for new trial. **McCain**, 2 A. 391, 58 S. E. 550.

In admitting, without due preliminary proof; duty of excepting party to show affirmatively, to reviewing court. **Arnold**, 4 A. 56, 50 S. E. 815.

In excluding essential evidence offered by plaintiff entitles him to decline to introduce further evidence; this will not prevent him from excepting to verdict directed. **Proctor & Gamble Co.**, 128/606, 57 S. E. 879.

In excluding, when no cause for reversing grant of nonsuit. **Flint River Lumber Co.**, 134/627, 68 S. E. 436.

In receiving, no cause to set aside correct final judgment. **Maxwell**, 148/50, 95 S. E. 693.

In refusing to allow witness to testify, no ground for reversal, unless injury shown; the expected testimony should be set forth. **Dennis**, 10 A. 219, 73 S. E. 35.

In rejecting, cured by what was admitted. **Frey**, 112/242, 37 S. E. 376.

Error—Continued).

In ruling as to evidence, induced by party, he is not entitled to complain of. **Commercial City Bank**, 18 A. 609, 90 S. E. 173.

In ruling on, not necessarily controlling verdict, only thing excepted to; writ of error dismissed. **Anderson**, 126/393, 55 S. E. 19; **Cox**, 126/398, 55 S. E. 232.

No basis for assignment of, that court had previously rejected evidence of the same fact. **Southern Ry. Co.**, 130/222, 60 S. E. 539. And where afterward, substantially the same testimony by the same witness is admitted. **Stewart**, 130/685, 61 S. E. 597. See **Watkins**, 130/806, 62 S. E. 32.

In excluding, on cross-examination, harmless; not materially different from that given on direct. **Goolsby**, 147/250, 93 S. E. 407.

In admitting and excluding, when no ground to reverse grant of injunction. **Stevens**, 133/254, 65 S. E. 400; **Walters**, 133/641, 66 S. E. 884; **McMillan**, 133/761, 66 S. E. 943.

In admitting, may generally be cured by afterward ruling out, with instruction to jury. **Buchanan**, 137/774, 74 S. E. 536. Exception to this rule. **Thompson**, 12 A. 202, 76 S. E. 1072.

In admitting, cured by excluding. **Hall**, 22 A. 112, 95 S. E. 936; **Williams**, 138/825, 76 S. E. 347.

In admitting, cured by withdrawal, when. **Smith**, 16 A. 691, 85 S. E. 973. Whether cured by withdrawing the testimony. **Hesters**, 17 A. 412, 87 S. E. 148. Withdrawal by judge. **Cook**, 17 A. 543, 87 S. E. 832.

In admitting, no cause to set aside verdict which should be the same if ruling were otherwise. **Central Ry. Co.**, 2 A. 511, 58 S. E. 904.

In excluding, cured by subsequent testimony to same effect. **Heriot**, 12 A. 203, 76 S. E. 1066; **Kennedy**, 21 A. 427, 94 S. E. 583; **Lambright**, 21 A. 491, 94 S. E. 593.

In admitting, when not cured by defendant offering like evidence. **Ga. Ry. Co.**, 122/547, 50 S. E. 478.

Error—Continued).

In admitting, cured by evidence afterwards admitted. **Roberts**, 123/157, 51 S. E. 374. Cured by ruling it out and instructing jury to disregard it. **Rentfrow**, 123/539, 51 S. E. 596.

In admitting, cured by other proof. **Fletcher**, 10 A. 184, 73 S. E. 38.

In admitting, cured by other party introducing other evidence that removes the objection. **Shaw**, 133/446, 66 S. E. 240.

In admitting, cured by introduction of other testimony to the same effect without objection. **Terry**, 15 A. 108, 82 S. E. 635; **Griffin**, 15 A. 552, 83 S. E. 871; **Patterson**, 17 A. 341, 86 S. E. 782; **Matthews**, 19 A. 489, 91 S. E. 914; **Daughtry**, 1 A. 393, 58 S. E. 230; **Smith**, 23 A. 77, 97 S. E. 454; **Savannah El. Co.**, 130/422, 60 S. E. 1053; **Augusta Ry. & Elec. Co.**, 12 A. 854, 78 S. E. 949; **Citizens National L. Ins. Co.**, 13 A. 30, 78 S. E. 683; **Southern Express Co.**, 13 A. 174, 78 S. E. 1111.

In admitting, no cause for reversal, if verdict demanded. **Central Ry. Co.**, 118/142, 44 S. E. 975; **Marchman**, 118/219, 44 S. E. 992; **Martin**, 118/573, 45 S. E. 446; **Middlebrooks**, 118/773, 45 S. E. 607; **Vickers**, 118/783, 45 S. E. 618; **Malone**, 101/194, 28 S. E. 689.

In rejecting cured by later admission. **Brown**, 148/266, 96 S. E. 435; **Murray**, 144/614, 87 S. E. 1068; **Young**, 131/499, 62 S. E. 707; **Alexander**, 118/26, 44 S. E. 851. Exclusion of particular witness no cause for reversal, when matter offered by him was proved by other witnesses for both sides. **Robinson**, 118/198, 44 S. E. 985.

In excluding, no cause for new trial, where substantially the same testimony is afterwards admitted. **Thompson**, 8 A. 23, 68 S. E. 518; **Hentz**, 8 A. 577, 70 S. E. 108; **Southern Ry. Co.**, 131/21, 61 S. E. 913; **Central Ry. Co.**, 131/166, 62 S. E. 164; **Lee**, 131/577, 62 S. E. 820.

In excluding, no cause for new trial, where substantially given by same witness at other point. **Luke**, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559.

Error—(Continued).

In receiving, over objection, no ground for reversal. **Lester-Whitney Co.**, 1 A. 244, 58 S. E. 212; **Crankshaw**, 1 A. 364, 58 S. E. 222; **Daughtry**, 1 A. 893, 58 S. E. 230; **Marshall**, 1 A. 485, 57 S. E. 1006; **Niagara Ins. Co.**, 1 A. 603, 57 S. E. 1018; **So. Ry. Co.**, 1 A. 736, 58 S. E. 244; **Quillian**, 122/50, 49 S. E. 801; **Ga. R. Co.**, 122/290, 50 S. E. 124; **Williams**, 122/295, 50 S. E. 110; **Town of Adel**, 122/535, 50 S. E. 481; **Bailey**, 122/617, 50 S. E. 388.

In receiving, when no cause for new trial. **Lynn**, 140/388, 79 S. E. 29; **Smith**, 140/791, 79 S. E. 1127; **Central Ry. Co.**, 113/87, 38 S. E. 335; **Davis**, 113/749, 39 S. E. 295; **Raleigh R. Co.**, 113/868, 39 S. E. 555; **Almand**, 113/987, 39 S. E. 421; **Hollingsworth**, 113/1099, 39 S. E. 465; **Parker**, 113/1167, 39 S. E. 475; **Central Georgia Power Co.**, 142/662, 83 S. E. 524; **Martin**, 142/807, 83 S. E. 958; **Caruth**, 135/803, 70 S. E. 321.

In excluding, when no ground of reversal. **Stewart**, 133/10, 65 S. E. 110, 17 Ann. Cas. 1085; **Weeks**, 133/473, 66 S. E. 168, 134 Am. St. R. 213; **Fowler**, 133/664, 66 S. E. 900; **Grantam**, 136/17, 70 S. E. 790; **Strickland**, 137/115, 72 S. E. 922.

In excluding, when no cause for new trial; fact having been admitted. **Southern Ry. Co.**, 135/24, 68 S. E. 789.

In admission or exclusion of, when no cause for new trial. **Rawls**, 124/11, 52 S. E. 72; **McCoy**, 124/218, 52 S. E. 434; **Warner**, 124/387, 52 S. E. 446, 4 Ann. Cas. 180; **Lee**, 124/495, 52 S. E. 806; **Andrew**, 124/515, 52 S. E. 653; **Reed**, 117/116, 43 S. E. 433; **Jones**, 117/326, 43 S. E. 715; **Peterson**, 117/391, 43 S. E. 713; **Smith**, 12 A. 13, 76 S. E. 647; **Thomas**, 115/237, 41 S. E. E. 578; **Acme Brewing Co.**, 115/505, 42 S. E. 8; **Glover**, 115/696, 42 S. E. 40; **McDaniel**, 115/751, 42 S. E. 93; **Moore**, 115/796, 42 S. E. 57; **Burch**, 125/153, 53 S. E. 1008; **Corker**, 125/428, 54 S. E. 92; **Cannon**, 125/787, 54 S. E. 692; **Elliott**, 115/926, 42

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S. E. 218; *Garmany*, 124/882, 53 S. E. 669, 110 Am. St. R. 207; *Noble*, 124/962, 53 S. E. 463; *Rawlins*, 124/33, 52 S. E. 1; *Hawes*, 124/568, 52 S. E. 922; *Lester-Whitney Co.*, 1 A. 244, 58 S. E. 212; *Crankshaw*, 1 A. 364, 58 S. E. 222; *Daughtry*, 1 A. 393, 58 S. E. 230; *Marshall*, 1 A. 485, 57 S. E. 1006; *Niagara Ins. Co.*, 1 A. 603, 57 S. E. 1018; *Southern Ry. Co.*, 1 A. 736, 58 S. E. 244; *Arnold*, 4 A. 58, 60 S. E. 815; *Ray*, 4 A. 71, 60 S. E. 816; *Meinhard*, 4 A. 182, 61 S. E. 34; *Southland Mills*, 4 A. 753, 62 S. E. 532.

Escape, refusal to, on opportunity, not admissible. *Kennedy*, 101/559, 28 S. E. 979; *Lingerfelt*, 125/4, 53 S. E. 803, 5 Ann. Cas. 310.

Effort or intent to, when admissible. *Bines*, 118/327, 45 S. E. 376, 68 L. R. A. 33.

Establishment of lost paper, not necessary, before suit on. *Continental Fertilizer Co.*, 7 A. 721, 67 S. E. 1052.

Estoppel against contention that evidence should be suppressed from record, under what facts. *Niagara Ins. Co.*, 1 A. 603, 57 S. E. 1018.

By judgment; admissibility of evidence outside the record, to show what was determined. *Halliday*, 128/649, 58 S. E. 169.

By judgment, evidence admissible in opposition to plea of. *Draper*, 122/234, 50 S. E. 113, 69 L. R. A. 483, 2 Ann. Cas. 650.

In favor of purchaser without notice by statement of secured creditor to purchaser's vendor. *Baron*, 144/472, 87 S. E. 396. See **Estoppel**.

Not to be shown by proof of facts different from those pleaded. *Alston*, 5 A. 111, 62 S. E. 713.

Testimony as to, not received under plea of novation. *Trentham*, 118/530, 45 S. E. 421.

Testimony relevant on issue of, that ward, on receipt of money from guardian, stipulated that such payment should not conclude him, etc. *Moore*, 116/28, 42 S. E. 258.

Testimony was not inadmissible because it did not raise. *Becker*, 138/640, 75 S. E. 1122.

To assert lien, not waiver of lien, shown by testimony held admissible. *Bailie*, 141/807, 82 S. E. 232.

To make contention as to insufficiency of, no such estoppel here. *Martin*, 20 A. 569, 93 S. E. 223.

What evidence admissible on question of. *Watkins*, 130/802, 806, 62 S. E. 32. **Eviction arising from conveyance to one**, not shown by conveyance to another; especially when not shown that title ever went into such other. *Sheppard*, 114/411, 40 S. E. 282.

Of tenant; admissibility and incompetency of testimony offered in defense. *Roberson*, 145/626, 89 S. E. 769.

Of tenant holding over; what evidence not admissible under defense that rent is not due. *Wilson*, 139/170, 76 S. E. 998.

Evidence offered in defense, no error in excluding. *Purtell*, 137/318, 73 S. E. 634.

Warrant, rejection of letters on trial of issue on, when no cause for new trial. *Talley*, 138/396, 75 S. E. 465.

"Evidence" and "testimony" distinguished. *L. & N. R. Co.*, 21 A. 327, 94 S. E. 321.

Examination of plaintiff suing for physical injury; discretion of judge appointing physicians to make physical examination, not abused. *Temples*, 19 A. 308, 313, 91 S. E. 502. **Discretion of judge in refusing to require**, not controlled when not abused. *Macon R. Co.*, 133/83, 65 S. E. 146.

Of records for part of period in question, when not admissible. *Wilson*, 127/316, 56 S. E. 457.

Exception to admission of, not well taken where objection was to whole, and part was admissible. *Burkhart*, 137/366, 73 S. E. 583. *Higgs*, 145/414, 89 S. E. 361.

To writings as a whole, some being admissible, not sustained. *Ginn*, 142/420, 83 S. E. 118.

Exception—(Continued).

To admission or exclusion, embracing superfluous matter, when not considered. **Jones**, 146/238, 91 S. E. 45.

Must show how the evidence was material or hurtful. **Hunter**, 148/566, 97 S. E. 523.

To auditor's report, necessary reference to evidence in. **McCord**, 135/176, 69 S. E. 23.

To auditor's rulings on evidence, when not sufficient to present questions for determination. **McArthur**, 148/232, 96 S. E. 339.

Direct, without exception to verdict or final judgment, effect of. **Anderson**, 126/393, 55 S. E. 19; **Cox**, 126/398, 55 S. E. 19; **Cox**, 126/398, 55 S. E. 232.

To exclusion of, contradicted by brief of evidence, how treated. **Woods**, 137/85, 72 S. E. 908; **Fairchilds**, 144/348, 87 S. E. 285.

To exclusion of, for purpose offered; consideration, when not necessary. **Fuller**, 137/66, 72 S. E. 504; **Kent**, 144/7, 85 S. E. 1017.

Must indicate how defendant was injured by court not allowing State's witness to answer question on cross-examination. **Andrews**, 118/1, 43 S. E. 852.

To refusal to allow question must show that expected answer was stated to the trial judge, and what it was. **City of Atlanta**, 142/324, 82 S. E. 899; **Parks**, 142/391, 83 S. E. 100; **Cox**, 142/487, 83 S. E. 115. **Featherstone**, 146/13, 90 S. E. 282; **Steinheimer**, 146/214, 91 S. E. 19; **City of Jackson**, 146/250, 91 S. E. 63; **Holton**, 137/87, 72 S. E. 949; **Manning**, 136/881, 72 S. E. 401; **Goodwyn**, 2 A. 471, 58 S. E. 688; **Flemister**, 140/511, 79 S. E. 148; **Brotherton**, 140/610, 79 S. E. 459; **Andrews**, 118/4, 43 S. E. 852; **Grant**, 118/258, 43 S. E. 279. Must specify (set forth) the evidence excluded. **Binion**, 118/282, 45 S. E. 276; **Thompson**, 118/330, 45 S. E. 410; **Trentham**, 118/530, 45 S. E. 421; **Middlebrooks**, 118/773, 45 S. E. 607.

To allowance of questions on cross-examination, without stating the an-

Exception—(Continued).

swers given, not considered. **Gordon**, 145/682, 89 S. E. 749.

To exclusion of answer on cross-examination presented no point for determination. **Holton**, 137/87, 72 S. E. 949.

To admission of, must show that the objection was urged before the trial court. **Glasco**, 137/336, 73 S. E. 578. Must show that the stated ground of objection was presented and ruled on. **Hill**, 148/521, 97 S. E. 442; **Henslee**, 148/621, 97 S. E. 667.

Objection that was presented when evidence offered must appear. **Lane**, 118/167, 44 S. E. 993; **Woodbridge**, 118/672, 45 S. E. 266; **Butts**, 118/750, 45 S. E. 593; **Cody**, 118/785, 45 S. E. 622; **Grant**, 118/805, 45 S. E. 603; **Hilliard**, 147/16, 92 S. E. 643; **Pfeiger**, 147/474, 94 S. E. 580; **Brown**, 147/498, 94 S. E. 759; **Townsend**, 139/119, 76 S. E. 852; **Dunn**, 139/741, 742, 78 S. E. 122; **Hixon**, 144/408, 87 S. E. 475; **Richardson**, 146/15, 90 S. E. 379; **Bowen**, 146/157, 91 S. E. 32.

To omission or exclusion of evidence, not considered unless it be stated literally or substantially. **Bennett**, 148/67, 95 S. E. 690; **Cason**, 148/477, 97 S. E. 74; **Hill**, 148/521, 97 S. E. 442; **Coleman**, 148/757, 98 S. E. 269; **Pound**, 146/431, 91 S. E. 405; **National Bauxite Co.**, 146/530, 91 S. E. 781; **Willbanks**, 146/750, 92 S. E. 281; **Lewis Mfg. Co.**, 147/203, 93 S. E. 206; **Bank of Cumming**, 147/517, 94 S. E. 1012; **Deal**, 147/523, 94 S. E. 1013; **Byrd**, 622, 95 S. E. 224; **Danner**, 147/667, 95 S. E. 233; **Adams**, 101/43, 28 S. E. 484; **Shockley**, 103/157, 29 S. E. 694; **DeGraffenreid**, 103/651, 30 S. E. 560; **Propper**, 136/788, 72 S. E. 242; **Spann**, 139/715, 77 S. E. 1128; **Jones**, 139/596, 77 S. E. 810; **Burkhart**, 137/366, 73 S. E. 583; **Walton**, 147/487, 94 S. E. 562; see **Sims**, 147/200, 93 S. E. 200.

To admission of affidavit, not setting forth substance of its contents, presents no question. **Brewer**, 144/549, 87 S. E. 657.

Exception—(Continued).

To admission or exclusion of documents, not setting them forth literally or in substance, not considered. **Stone**, 145/729, 89 S. E. 814; **Ford**, 145/802, 89 S. E. 834. Reference to brief of evidence not sufficient. **Callaway**, 140/207, 78 S. E. 846; **Ford**, 140/670, 79 S. E. 576.

To admission of record, not showing what its contents were, not passed on. **Bowling**, 142/397, 83 S. E. 112.

To exclusion of, shown by attached exhibit, when sufficient for consideration. **Tallulah Ry. Co.**, 137/568, 73 S. E. 838.

To admission or exclusion of, must state, or refer to attached exhibit containing. **Patterson**, 136/664, 71 S. E. 1117.

Must state name of the witness. **Hunter**, 148/566, 97 S. E. 523.

Too indefinite for decision. Plat not identified by reference as given. **Golightly**, 148/20, 95 S. E. 683.

When evidence not legally presented. **Williams**, 145/91, 88 S. E. 557; **Kirkland**, 145/94, 88 S. E. 680.

Admission sufficient to raise question of admissibility. Dissent in **Brown**, 146/514, 91 S. E. 771.

To admission and exclusion of testimony, not sufficient to raise questions for decision. **Jeffers**, 145/74, 88 S. E. 571; **City of Rome**, 145/191, 88 S. E. 931.

To rulings upon admission or exclusion of, when not sufficient for consideration. **Smith**, 133/170, 65 S. E. 414; **Shaw**, 133/446, 66 S. E. 240; **Tucker**, 133/470, 66 S. E. 250; **Toomey**, 133/856, 67 S. E. 100; **Central Ry. Co.**, 133/153, 65 S. E. 367; **Bond**, 133/161, 65 S. E. 376, 134 Am. St. R. 199; **Langley**, 126/100, 54 S. E. 821; **Weaver**, 116/555, 42 S. E. 745; **White**, 116/573, 42 S. E. 751; **Hunt**, 116/616, 42 S. E. 1004; **Kelley**, 116/881, 84 S. E. 280; **Bass Co.**, 116/176, 42 S. E. 415; **Wright**, 116/194, 42 S. E. 396; **Tilley**, 116/426, 42 S. E. 741; **Whelchel**, 116/431, 42 S. E. 776; **Somers**, 116/535, 42 S. E. 779; **Tillman**, 134/661, 68 S. E. 504; **Wadsworth**, 134/816, 68 S. E.

Exception—(Continued).

649; **Norton**, 134/21, 67 S. E. 425; **Cook**, 134/347, 67 S. E. 812; **McCray**, 134/416, 68 S. E. 62, 20 Ann. Cas. 101; **Young**, 134/602, 68 S. E. 321; **McElwaney**, 131/98, 62 S. E. 20; **Sims**, 131/262, 62 S. E. 192; **Fullbright**, 131/342, 62 S. E. 188; **Lay**, 131/346, 62 S. E. 189; **Morris**, 131/498, 62 S. E. 806; **Dodge**, 131/549, 62 S. E. 987; **Lee**, 131/577, 62 S. E. 820; **Cochran**, 131/588, 62 S. E. 1048; **Foddrill**, 131/799, 63 S. E. 350; **Richardson**, 141/782, 82 S. E. 134; **Gordon**, 141/347, 80 S. E. 1007; **Walker**, 141/435, 81 S. E. 203; **Chambers**, 141/652, 81 S. E. 880; **West**, 141/681, 81 S. E. 1036; **Madden**, 137/555, 73 S. E. 825; **Montgomery**, 137/634, 73 S. E. 1053; **Hassel**, 137/636, 73 S. E. 1052; **Holton**, 137/87, 89, 72 S. E. 949; **Venable**, 137/375, 73 S. E. 633; **Huckaby**, 137/375, 376, 73 S. E. 633; **Davis**, 137/451, 73 S. E. 579; **Walters**, 137/475, 73 S. E. 653; **Wadley Ry. Co.**, 137/498, 73 S. E. 741; **Tilley**, 135/386, 69 S. E. 477; **Whigby**, 135/584, 69 S. E. 1114; **Phinizy**, 135/678, 70 S. E. 243; **Noll**, 135/712, 70 S. E. 577; **Mosley**, 135/71, 72, 68 S. E. 804; **McClellan**, 135/95, 68 S. E. 1025; **Georgia R. Co.**, 135/108, 68 S. E. 1024; **Jones**, 135/358, 69 S. E. 527; **Johnson**, 135/365, 69 S. E. 481; **Lockwood**, 132/460, 64 S. E. 655; **Gillis**, 132/762, 64 S. E. 1096; **Tarver**, 132/799, 65 S. E. 177, 24 L. R. A. (N. S.) 1161; **Jackson**, 132/56, 63 S. E. 823; **Stoner**, 132/178, 63 S. E. 897; **Hawkins**, 132/266, 63 S. E. 852, 131 Am. St. R. 190; **Morris**, 132/346, 63 S. E. 1114; **Mitchell**, 132/361, 64 S. E. 275; **Whiddon**, 144/77, 86 S. E. 243; **Ga. & C. Ry. Co.**, 143/46, 84 S. E. 120; **Edenfield**, 143/96, 97, 84 S. E. 436; **L. & N. R. Co.**, 143/208, 84 S. E. 451; **Browder-Manget Co.**, 143/737, 85 S. E. 881; **Central Ry. Co.**, 143/753, 85 S. E. 920; **Wilkes**, 138/407, 75 S. E. 353; **Bandy**, 138/516, 75 S. E. 626; **Artesian Co.**, 138/618, 75 S. E. 646; **Hill**, 138/750, 75 S. E. 1130; **Stewart**, 138/797, 76 S. E. 352; **Simmons**, 138/137, 74 S. E. 1000; **Commissioners**, 138/351, 75 S. E. 317; **Southern Ry. Co.**, 138/371, 75 S. E.

462; *Shippen Lumber Co.*, 136/38, 70 S. E. 672; *Holloway*, 140/381, 78 S. E. 928; *Ga. & Fla. Ry.* 140/464, 79 S. E. 142; *Dale*, 140/790, 79 S. E. 1127; *Owens*, 139/475, 77 S. E. 635; *Hinkle*, 127/437, 56 S. E. 464; *Lewis*, 127/790, 56 S. E. 998; *Yates*, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620; *Lyons*, 142/258, 82 S. E. 651; *Hope*, 142/316, 82 S. E. 929; *Haley*, 142/390, 82 S. E. 1058; *Carolina Co.*, 3 A. 732, 60 S. E. 375; *Brinson*, 3 A. 223, 59 S. E. 711; *Southern Ry. Co.*, 3 A. 410, 59 S. E. 1115; *Brown*, 3 A. 479, 60 S. E. 216; *City of Atlanta*, 3 A. 614, 60 S. E. 327; *Waters*, 3 A. 649, 60 S. E. 335.

Excitement, public, and danger to accused, evidence as to, when immaterial on trial of issue as to guilt. *Brown*, 105/640, 31 S. E. 557.

Appearance of, or the contrary, admissibility of testimony as to. *Roberts*, 123/146, 51 S. E. 374.

Exclusion, complaint of, answered by showing the same testimony in approved brief of evidence. *Tompkins*, 139/378, 77 S. E. 623.

Distinct ruling not invoked, court's omission not ground for new trial. *Bowling*, 142/397, 83 S. E. 112.

Motion for, must be made if facts later appear as ground of objection. *McConnell*, 134/95, 102, 67 S. E. 440.

No cause for new trial, where immaterial without aid of further evidence. *Harvard*, 145/581, 89 S. E. 740.

Not cause new trial, where probative value so slight that it is not probable it would have affected the result. *Elliot*, 115/926, 42 S. E. 218.

After moving counsel has cross-examined witness, when no cause for new trial. *Central Ry. Co.*, 143/753, 85 S. E. 920.

Of all, where offered as a whole, no error if part be incompetent. *Arnold*, 131/494, 62 S. E. 806.

Of answer on cross-examination, error in, cured by testimony afterwards elicited. *Williams*, 145/177, 88 S. E. 958.

Not ground for reversal unless expected answer appear. *Moree*, 110/256, 34 S. E. 327. **Assignment of error must show what offered to be proved.** *Perryman*, 102/502, 31 S. E. 37.

Of answer to question in chief, no error for reversal, unless court was informed of expected answer. *Rogers*, 144/390, 87 S. E. 397.

By charge of court, cured error in admitting. *Wyatt*, 18 A. 29, 88 S. E. 718; *Coweta County*, 4 A. 95, 105, 60 S. E. 1018.

By charge of court, from consideration by jury, as tending to support a defense not pleaded. *Schmidt*, 117/6, 43 S. E. 371.

Of direct testimony, when not required on account of admission on cross-examination. *McCrary*, 141/4, 80 S. E. 305.

Of document partly irrelevant, not reversed, where relevant parts not designated. *Hall*, 144/145, 86 S. E. 316.

Of evidence that could not change result, no ground for new trial. *Reid*, 134/508, 68 S. E. 97.

For wrong reason, upheld for a different reason. *Brunswick R. Co.*, 129/175, 58 S. E. 410.

New trial not required for. *Jones*, 137/21, 72 S. E. 410.

Of testimony of admitted fact, when no cause for reversal. *Whitaker*, 110/857, 36 S. E. 231.

No cause for new trial, where case not materially changed. *George W. Muller Co.*, 143/840, 85 S. E. 1018.

Of testimony which afterwards became or was held admissible, no ground for reversal, when not reoffered. *McLeod*, 128/17, 57 S. E. 83; *Horton*, 128/26, 57 S. E. 224.

When no cause for new trial; facts and circumstances being stated. *Perdue*, 135/278, 69 S. E. 184.

Without motion where offered in support of plea not good in law but not demurred to. *Crew*, 115/511, 524, 42 S. E. 16.

Excluded, went out with jury by inadvertence. Corrected by instruc-

tion of court. **Kaplin**, 108/302, 33 S. E. 967.

By judge of his own motion, when not required, though previously objected to. **Macon R. Co.**, 127/472, 56 S. E. 616.

May be harmless error, where substantially the same has been proved. **Benning**, 120/734, 48 S. E. 123. When of no aid to party offering. **Johnson**, 120/778, 48 S. E. 373. No error in refusing to exclude, where like testimony previously received without objection. **County of Butts**, 135/27, 68 S. E. 786.

No ground for new trial, where admitted at later stage of the trial. **De-Nieff**, 138/248, 75 S. E. 202; **Woods**, 137/85, 72 S. E. 908.

No cause for reversal, where substantially the same evidence afterward admitted. **Estes**, 136/709, 71 S. E. 1120.

Harmless here, in view of other testimony of the same witness, to the same purport. **McDaniel**, 115/751, 42 S. E. 93. See **Elliott**, 115/926, 42 S. E. 218; **White**, 113/577, 38 S. E. 944; **Doggett**, 113/950, 39 S. E. 506; **Maynard**, 116/196, 42 S. E. 376; **Connecticut Insurance Co.**, 142/358, 82 S. E. 1054; **Ogburn**, 142/360, 82 S. E. 1070.

Excuses for non-performance of general duty, irrelevant in suit for breach of contract. **Chattanooga R. Co.**, 133/127, 65 S. E. 285.

Exhumation of body, possible facts discoverable by, when not admissible to discredit witnesses on trial for murder. **Gleason**, 102/692, 29 S. E. 436.

Expense of employment of help, rendered necessary by injury sued for, admissibility of evidence as to. **Macon R. Co.**, 113/216, 38 S. E. 756.

Expectancy of life of father suing for loss of child's services, whether considered, not decided. **Central Ry. Co.**, 143/754, 85 S. E. 920.

Experiments, admissibility of testimony as to. **McClendon**, 7 A. 785, S. E. 331; **Atlanta R. Co.**, 2 A. 352, 58 S. E. 500; **DeLoach**, 2 A. 493, 58 S. E. 790.

Discretion as to admission of testimony of, not controlled unless abused. V. II—43.

Augusta Ry. Co., 3 A. 513, 60 S. E. 213. Discretion not abused. **Carolina Cement Co.**, 9 A. 556, 71 S. E. 942.

Made by witness, admissibility of. **Taylor**, 135/622, 70 S. E. 237.

Out of court, to illustrate issue on trial; when admissible, and how objectionable. **Hicks**, 146/221, 91 S. E. 57. **Explanation by witness**, as to matter tending to discredit him, proper to allow, when. **Gazaway**, 15 A. 467, 83 S. E. 857.

False, circumstance tending to show guilt. **Gantz**, 18 A. 154, 88 S. E. 993.

False testimony formerly given under fear of being convicted of crime, no excuse for perjury, but may afford moral explanation. **Chandler**, 124/821, 53 S. E. 91.

Of circumstances of guilt, admissible. **Johnson**, 120/136, 47 S. E. 510. Of making partial payments—whether liability thereby admitted. **Hawkins**, 120/617, 48 S. E. 169.

Of fact brought out on cross-examination, when not irrelevant. **Rouse**, 136/365, 71 S. E. 667.

Of omission to testify may be made. **Wood**, 145/260, 88 S. E. 980.

Of witness's conduct or silence, previous threat of her father not admissible for. **Moose**, 145/361, 89 S. E. 335.

Of words written in letter; what contradiction not allowed. **George W. Muller Co.**, 145/484, 89 S. E. 615.

Unreasonable, by defendant; effect of. **Davis**, 4 A. 274, 61 S. E. 132; **Johnson**, 4 A. 633, 62 S. E. 152.

Of conduct, admissibility of testimony. **Western & Atlantic R. Co.**, 141/653, 81 S. E. 1108.

Extra compensation to executor; all facts and circumstances considered, on exception to auditor's report. **Adair**, 136/3, 70 S. E. 578.

Facts that must be known to jury as matters of human experience, evidence as to, rejected as unnecessary. **Sheftall**, 123/598, 51 S. E. 646.

Failure of consideration, evidence showing, not allowed where not pleaded. **Sams**, 103/678, 30 S. E. 668.

Evidence supporting plea of, improperly excluded. *Seed*, 103/550, 30 S. E. 626.

False swearing, what admissible on trial for *Thompson*, 120/132, 47 S. E. 566.

Falsity of, admitted by witness after trial, no cause for setting aside conviction. *Rogers*, 129/590, 59 S. E. 288.

Fear on part of witness, admissibility of testimony as to. *Kimbrough*, 9 A. 301, 70 S. E. 1127. Reasonableness of fears, what evidence admissible to show, in murder case. *Daniel* 103/202, 29 S. E. 767.

Feeling or absence of feeling of witness, considered from his demeanor, without direct evidence. *Mitchell*, 110/272, 34 S. E. 576.

Between witnesses, when not allowed to be shown. *Atlanta Con. St. Ry. Co.*, 107/163, 33 S. E. 191.

Testimony as to effect on, unnecessary, and properly rejected, in libel case. *Sheftall*, 123/598, 51 S. E. 646.

Friendly between accused and son of deceased, testimony as to, not admitted on trial for murder. *Sasser*, 129/542, 59 S. E. 255. Feeling, or relationship of witness to deceased, in murder case, admissibility of evidence as to. *Daniel*, 103/202, 29 S. E. 767.

Of accused, against wife of deceased, irrelevant, in homicide case. *Darby*, 16 A. 172, 84 S. E. 724.

Of accused, circumstances indicating state of, were not altogether irrelevant and immaterial. *Ray*, 142/656, 83 S. E. 518.

Of deceased towards slayer, admissibility of proof as to. *Sasser*, 129/541, 59 S. E. 255.

Of husband against wife, whom he was seeking at defendant's house when killed; admissibility of testimony as to. *Amos*, 14 A. 590, 81 S. E. 903.

Of parties to difficulty; admissibility of testimony that they "made friends with each other." *Ogletree*, 18 A. 41, 88 S. E. 751.

Of prosecutor, not witness, irrelevant. *Hart*, 14 A. 365, 80 S. E. 909.

Of witness, admissibility of testimony as to. *Kimbrough*, 9 A. 301, 70 S. E. 1127; *Miller*, 9 A. 599, 71 S. E. 1021.

Admissibility of testimony that a brother of witness was in litigation with the plaintiff. *Ca. Life Ins. Co.*, 12 A. 862, 78 S. E. 1115.

Of witness, cross-examination as to. *Griffin*, 18 A. 462, 89 S. E. 537; *Glover*, 15 A. 45, 54, 82 S. E. 602.

Of witness, bad towards party, party not allowed to cross-examine him as to where not denied. *Sasser*, 129/548, 59 S. E. 255.

Cross-examination as to difficulty between witness and party against whom he is testifying, allowed when. *Smith*, 12 A. 13, 76 S. E. 647.

Of witness, exclusion of testimony to show, when no cause for new trial. *Jefferson*, 137/383, 73 S. E. 499.

Proof that witness for accused was his paramour, allowed, to show her state of feeling. *Brown*, 119/572, 46 S. E. 833.

Of witness, state of, may be shown. *Nix*, 120/166, 47 S. E. 516. Testimony tending to show. *Bates*, 4 A. 491, 61 S. E. 888; *Walker*, 6 A. 61, 64 S. E. 310. Testimony illustrating. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; *Brooks*, 134/784, 68 S. E. 504. Indictments against him threw light thereon. *Purdie*, 118/798, 45 S. E. 606. Feeling or state of mind, testimony showing. *Rouse*, 135/228, 69 S. E. 180.

State of, between witness and legatee, when relevant. *Gordon*, 141/343, 80 S. E. 1007.

Fertilizers, evidence sufficient as to tagging. *Young*, 3 A. 204, 59 S. E. 717.

Ingredients, admissibility of commercial value of. *Spinks*, 108/617, 33 S. E. 906.

Analysis, objections to admission of, not well taken here. *Morgan*, 110/783, 36 S. E. 219.

Financial condition of person applying for trust, admissible. What evidence relevant. *Churchill*, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

Pauper affidavit not admitted to show. *Southern Ry. Co.*, 108/201, 33 S. E. 952.

As showing motive for embezzlement. *Bridges*, 103/34, 29 S. E. 859.

Of plaintiff, relevant, in action for dishonoring check. *Hilton*, 128/30, 57 S. E. 78, 11 L. R. A. (N. S.) 224, 10 Ann. Cas. 987. Proof of. *Moore*, 128/91 95, 57 S. E. 110.

When not admissible on question as to character, or as to damages. *Savannah Electric Co.*, 6 A. 374, 65 S. E. 50.

Fire from locomotive, admissibility of testimony as to. *Akins*, 111/815, 35 S. E. 671; *Hendricks*, 123/342, 51 S. E. 415.

Irrelevant testimony as to where train usually stopped. *Southern Ry. Co.*, 146/141, 90 S. E. 860.

Testimony insufficient. *Gainesville R. Co.*, 101/747, 29 S. E. 213. Circumstances improperly excluded. *Brown*, 101/753, 29 S. E. 215.

Fire-insurance policy sued on, evidence of prior loss and compromise was irrelevant. *Queen Ins. Co.*, 136/741, 72 S. E. 41.

Flight, and breaking jail as circumstances of guilt, admissible; aliter, that accused did not flee. *Flannigan*, 136/132, 70 S. E. 1107.

Accused not allowed to prove he did not attempt flight. *Register*, 10 A. 623, 74 S. E. 429; *Dunn*, 13 A. 682, 79 S. E. 764; *Flannigan*, 135/221, 69 S. E. 171.

Expression of desire to take, admissible, as indicating consciousness of guilt. *Hixon*, 130/481, 61 S. E. 14.

Proof as to, met by proof that accused had given appearance bond; rebuttal by proof of forfeiture of bond. *Davis*, 11 A. 804, 76 S. E. 391.

As circumstance of guilt. *Smith*, 106/679, 32 S. E. 851; *Johnson*, 120/135, 47 S. E. 510; *Griffin*, 2 A. 534, 58 S. E. 781; *Glover*, 15 A. 45, 53, 82 S. E. 602; *Gantz*, 18 A. 154, 88 S. E. 993; *Stokes*, 19 A. 239, 91 S. E. 271; *Hudson*, 101/520, 28 S. E. 1010; *Thomas*, 129/419, 59 S. E. 246; *Middleton*, 7 A. 1, 66 S. E. 22; *Hall*, 7 A. 116, 120, 66 S. E. 390; *Huey*, 7 A. 406, 66 S. E.

1023. Admissibility of testimony, and how considered. *Kettles*, 145/6, 88 S. E. 197. Sheriff may testify he tried to find accused, and found him at other place. *Turner*, 114/425, 40 S. E. 303.

Footprints, as circumstantial evidence. *McCoy*, 18 A. 698, 90 S. E. 355.

Forcible detainer, joint defendant's conduct, evidence as to, when admissible on trial of his codefendant. *Lewis*, 105/657, 31 S. E. 576.

Pendency of civil action for, irrelevant on trial of one indicted for. *Lewis*, 105/657, 31 S. E. 576.

Former act of like character by one charged with crime, admissibility of proof as to. *Sullivan*, 121/186, 48 S. E. 949.

Former conduct, when not relevant on issue as to care. *Pullman Co.*, 126/610, 55 S. E. 933, 9 L. R. A. (N. S.) 407. Former instances of negligence, when not admissible. *Rome Ry. Co.*, 13 A. 795, 79 S. E. 1131.

Former conviction, evidence as to, when inadmissible. *Bashinski*, 123/509, 51 S. E. 499.

Evidence showing, not admissible while case was at issue on plea of not guilty. *Hall*, 103/403, 29 S. E. 915.

Of like offense, how judge may ascertain. *McWhorter*, 118/55, 44 S. E. 873.

Former crime, admissibility of evidence as to. *Clarke*, 5 A. 95, 62 S. E. 663. See *Taylor*, 5 A. 237, 62 S. E. 1048; *Denham*, 5 A. 303, 63 S. E. 62; *Griffin*, 18 A. 462, 89 S. E. 537; *Bates*, 18 A. 718, 719, 90 S. E. 481; *McDuffie*, 17 A. 343, 86 S. E. 821; *Saffold*, 11 A. 329, 75 S. E. 338; *McCrary*, 11 A. 788, 76 S. E. 163; *Cooper*, 13 A. 697, 79 S. E. 908; *Wiggins*, 14 A. 314, 80 S. E. 724.

Former difficulty, when not admissible. *Daniel*, 103/202, 29 S. E. 767.

Former occurrence, relevancy of testimony as to. *W. & A. R. Co.*, 23 A. 225, 97 S. E. 878.

Former quarrel, not too remote to be relevant, on trial for assault with intent to murder. *Jackson*, 18 A. 683, 90 S. E. 368.

Former suit, evidence as to issues in, when not admitted. *Lamar*, 113/785, 39 S. E. 498.

Forgery, testimony of accused's financial condition before and after, admissible. *Walker*, 127/48, 56 S. E. 113, 8 L. R. A. (N. S.) 1175, 119 Am. St. R. 314.

Foundation, objection for want of, must indicate what is proper foundation. *Freeman*, 147/700, 95 S. E. 236.

Not laid by prisoner's statement. *Nix*, 120/162, 47 S. E. 516.

Not laid, no error in excluding. *McLeod*, 128/17, 57 S. E. 83.

Fraud and undue influence, relevancy of testimony on issue as to, on probate of will. *Holland*, 148/277, 96 S. E. 419.

Actual (in horse swap), no issue of, without evidence of knowledge of defects. *Dunn*, 143/376, 85 S. E. 100.

Admissibility of application for policy on issue of, though not thereto attached. *Fraternal Life Assn.*, 140/284, 78 S. E. 915.

Admissibility of evidence on issue raised by attack on deed for. *Hinkle*, 133/255, 65 S. E. 427.

As against creditors, in conveying land, evidence as to, excluded, where offered by one not a creditor, for the purpose of attacking the deed. *Moore*, 123/424, 51 S. E. 351.

Circumstance tending to show: consent of parties not obtained to alleged consent verdict and decree attacked as fraudulent. *Kidd*, 105/209, 31 S. E. 430.

Conveyance made long after attachment issued, when not competent as evidence of. *Hobbs*, 103/1, 30 S. E. 257.

Evidence of good faith relevant to meet charge of. *Birmingham R. Co.*, 101/183, 28 S. E. 534.

Evidence showing badges of. *Kelley*, 138/186, 75 S. E. 6.

How disproved. *Baxley*, 117/62, 43 S. E. 436.

Inadequacy of price at sale, with corroborating circumstances, raising presumption. *Black*, 146/692, 92 S. E. 62.

In obtaining provision in decree, admissibility of evidence to show, and to repel charge of. *Milner*, 143/816, 35 S. E. 1045, L. R. A. 1916B, 977.

In representations inducing giving of note for price of stock shares, evidence as to. *Huson Ice Co.*, 143/300, 84 S. E. 969.

In procurement of deed, competency of evidence on issue as to. *Ogburn*, 142/360, 82 S. E. 1070.

In procuring insurance, evidence admissible to prove. *Johnson*, 134/800, 68 S. E. 731.

In procuring note; admissibility of testimony of false statements of agent. *Bank of Lavonia*, 140/594, 79 S. E. 459.

In voluntary conveyance, admissibility of evidence on issue of. *Varn*, 142/243, 82 S. E. 641.

Agent's part in perpetrating, admissible against principal. *Finch*, 146/687, 92 S. E. 63.

On creditors, evidence of expressed intent to effect, not admissible without showing of notice to transferee of negotiable instrument for value and before maturity. *Oliver*, 130/72, 60 S. E. 254.

Fraud or deception, when witness not allowed to deny that he used, in procuring signature. *Roberts*, 136/790, 72 S. E. 239.

Rebuttal of testimony as to, by indictment procured by plaintiff against person other than defendant. *Fite*, 142/660, 83 S. E. 515.

Testimony admissible on issue of; plaintiff's silence when promise made in his presence. *Moore*, 139/597, 77 S. E. 820. Fraudulent intent, prima facie evidence of. *Smith*, 141/482, 81 S. E. 220, Ann. Cas. 1915C, 999. Fraudulent intent of debtor, admissibility of evidence offered to show. *Ernest*, 107/61, 32 S. E. 898. Fraudulent representations inducing sale of stock, admissibility of evidence in suit concerning. *Fite*, 142/660, 83 S. E. 515. Fraudulent sale by debtor to avoid payment, admissibility of evidence on issue as to. *First National*

Bank, 142/262, 82 S. E. 625. Fraudulent scheme, various transactions tending to show. **Saffold**, 11 A. 329, 331, 75 S. E. 338; **McCrary**, 11 A. 788, 76 S. E. 163.

Freight delivered by initial to connecting carrier in good order, not admissible on issue of failure to trace freight on demand. **Davis**, 136/279, 71 S. E. 428.

Shipment, when no error to repel testimony that nothing was said about rates in making. **Kent**, 144/7, 87 S. E. 1017.

Tracing law, in suit under, irrelevant that defendant delivered the freight to next connecting carrier in good order. **Central Ry. Co.**, 116/863, 43 S. E. 265, 60 L. R. A. 817; **Savannah R. Co.**, 116/942, 43 S. E. 379.

Futures, dealing in; issue as to intent of actual delivery of goods, how determined. **Anderson**, 2 A. 1, 58 S. E. 401. That seller was a producer, and had a growing crop, was relevant on issue of actual delivery or speculation on chances. **Forsyth Co.**, 112/199, 37 S. E. 485, 81 Am. St. R. 28, L. R. A. 28.

Gaming, admissibility of evidence on trial for renting house to be used for. **Bashinski**, 123/508, 51 S. E. 499. Gaming-house, guilt of maintaining, how shown. **White**, 127/273, 56 S. E. 425.

Gift, admissibility of testimony to prove that deed was one of **Shackelford**, 135/30, 68 S. E. 838.

In parol, when testimony of making deed irrelevant in suit on. **Thompson**, 118/543, 45 S. E. 439. Admissibility of testimony on issue of fact. **Deal**, 147/523, 94 S. E. 1013.

Material circumstances in ascertaining intention to make, and acceptance. **Gould**, 120/50, 47 S. E. 505.

Of chattels by words, without further evidence of delivery, not valid. **Burt**, 112/466, 37 S. E. 726.

Of child by mother to grandmother, when not irrelevant as testimony. **Churchill**, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

Of land in parol; admissibility of conduct and declarations of alleged donor in buying. **Holloway**, 140/381, 78 S. E. 928.

Verbal, of land to wife, as showing waiver of marital rights and bona fides of subsequent deed attacked by creditors. **Lamkin**, 103/681, 30 S. E. 596.

To defendant, testimony relevant on issue as to, in suit by transferee of alleged donor. **Hudson**, 147/547, 94 S. E. 1007.

Ginnery, as to what constitutes; what testimony admissible, and what not. **Parks**, 142/391, 83 S. E. 100.

Good faith or bad in buying land; effect of knowledge of outstanding judgment and promise to pay it. **Rodgers**, 108/22, 33 S. E. 662.

Admissibility of party's testimony as to his own. **Roby**, 121/685, 686, 49 S. E. 694, 68 L. R. A. 601.

Witness may testify to his own, subject to test by the jury. **Thompson**, 120/440, 47 S. E. 935.

Admissibility of proof as to claim and act of ownership, to show bona fides. **Sackett**, 115/468, 41 S. E. 564.

Admissibility of evidence to show, on issue as to title by prescription. **Mitchell**, 134/384, 67 S. E. 1042.

Evidence as to want of. **Central Ry. Co.**, 6 A. 37, 64 S. E. 300.

Facts showing good faith in refusing to pay insurance. **Ga. Life Ins. Co.**, 12 A. 857, 78 S. E. 1115.

How proved. **Baxley**, 117/62, 43 S. E. 436; **Durrence**, 117/389, 43 S. E. 726.

Illustrated by offer to execute notes to take place of other notes destroyed. **Brooke**, 122/358, 50 S. E. 146.

Of purchaser, he may testify to, when. **Acme Brewing Co.**, 115/495, 502, 42 S. E. 8.

Want of, on the part of contestant for custody of child, record of alimony suit inadmissible to show. **Sumner**, 117/229, 43 S. E. 485.

Grand juror, testimony that one whose name appeared on indictment did not serve as, competent. **Bexley**, 141/1, 80 S. E. 314.

Name of, not intended to be put in box, not shown by testimony of jury commissioners, in abatement of indictment. **McCright**, 110/261, 34 S. E. 368.

That witness and others whose names appeared on indictment served as grand jurors competent. **Bexley**, 141/1, 30 S. E. 314. Grand jury's investigations, testimony as to, not admitted to show transaction on which true bill founded. **Davis**, 105/783, 32 S. E. 130.

Guardianship, contest for, value and condition of estate relevant on. **Armor**, 104/579, 30 S. E. 821.

Financial condition of applicant for, and of his wife, admissible. **Churchill**, 132/666, 64 S. E. 691, Ann. Cas. 1913-E, 1203. Guardian's consultation with ordinary, as bearing on issue of bona fides in dealing with ward's property. **Little**, 145/563, 89 S. E. 682.

Habeas corpus, evidence incompetent on hearing of, that accused could not have committed the crime charged. **Peebles**, 142/699, 83 S. E. 522.

For custody of child; relevant testimony touching ability of petitioner. **Sumner**, 118/590, 45 S. E. 509.

Reception of affidavits; better practice to hear orally or by interrogatories. **Porter**, 146/594, 91 S. E. 775; 93 S. E. 405.

Habit or course of dealing, implication from. **Noble**, 124/964, 53 S. E. 463.

Admissibility of testimony as to, as tending to show that a particular thing was done. **Burch**, 125/159, 53 S. E. 1008.

As tending to show negligence in particular instance. **Central Ry. Co.**, 113/176, 38 S. E. 394.

As to precautions, admissibility of proof of. **Atlanta Ice Co.**, 126/457, 55 S. E. 237.

Inadmissible testimony as to. **Ford**, 14 A. 318, 80 S. E. 696.

Known, of carrying of certain things from premises, when relevant as tending to show absence of larcenous intent. **Southern Ry. Co.**, 6 A. 43, 64 S. E. 308.

Of accepting premiums on insurance policy after time for payment, proof of, not allowed. **Vaughn**, 19 A. 660, 91 S. E. 1057.

Of carrying weapons may be relevant. **Watts**, 3 A. 606, 60 S. E. 287.

Of deceased, not appearing to have been known to accused, when not admissible. **Futch**, 137/75, 72 S. E. 911.

Of deceased to carry weapon, known to accused, when may be shown in murder case. **Daniel**, 103/202, 29 S. E. 767.

Of many to shoot from the hip, inadmissible to prove that accused intended to shoot from this position. **Baldwin**, 120/189, 47 S. E. 558.

Of negligence, when not relevant. **Pullman Co.**, 126/614, 55 S. E. 933, 9 L. R. A. (N. S.) 407.

Of negligence, admissibility of testimony offered to show. **Central Ry. Co.**, 107/75, 32 S. E. 904.

Of passenger in departing from cars, before or after injury sued for, not admissible to illustrate conduct at time of injury. **Atlanta Con. St. R. Co.**, 103/333, 30 S. E. 41.

Of using intoxicants, admissibility of testimony as to. **Howell**, 14 A. 414, 81 S. E. 247.

Of violating law, irrelevant testimony as to. **Wiggins**, 14 A. 314, 80 S. E. 724.

Of witness, admissibility of testimony as to. **Stewart**, 132/424, 64 S. E. 471.

Of workmen, in doing a particular kind of work, when relevant, as tending to show standard of common prudence. **Schaufele**, 6 A. 660, 65 S. E. 708.

Proof of. **Josey**, 20 A. 85, 92 S. E. 763. Habits exemplary, but careless about collecting debts, when not admissible, as to deceased creditor. **Norton**, 134/22, 67 S. E. 425. Habitual intoxication, proof of, does not extend to being constantly and continuously drunk. **Fuller**, 108/256, 33 S. E. 865. Harmless error in ruling as to. **Davitte**, 108/665, 34 S. E. 327; **Harrell**, 108/790, 33 S. E. 852; **Central Ry. Co.**,

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108/800, 33 S. E. 995; **Bluthenthal**, 108/810, 33 S. E. 996; **Avera**, 147/24, 92 S. E. 533; **Nash**, 147/209, 93 S. E. 203; **Hill**, 147/733, 95 S. E. 232; **Gibson**, 147/789, 95 S. E. 696; **Webb**, 13 A. 734, 80 S. E. 14; **Trav. Ins. Co.**, 119/455, 46 S. E. 678; **Brown**, 119/572, 46 S. E. 833; **Shedden**, 121/639, 49 S. E. 719; **City Electric Co.**, 121/663, 664, 49 S. E. 724.

In admitting evidence. **Great Southern Accident Co.**, 13 A. 292, 79 S. E. 162; **Bell**, 133/5, 65 S. E. 90; **Young**, 133/700, 66 S. E. 925; **Lee**, 138/646, 75 S. E. 1051; **Fowler**, 138/786, 76 S. E. 85; **Turner**, 138/808, 76 S. E. 349; **White**, 17 A. 551, 87 S. E. 831; **Edwards**, 129/304, 58 S. E. 817; **Whigby**, 135/584, 69 S. E. 1114; **Johnson**, 128/71, 57 S. E. 84; **Atlantic Ry. Co.**, 128/293, 57 S. E. 493; **Hicks**, 127/170, 56 S. E. 307; **Spillar**, 148/90, 95 S. E. 994; **Harris**, 142/298, 82 S. E. 902; **Mauldin**, 15 A. 358, 83 S. E. 276; **Smith**, 15 A. 713, 84 S. E. 159; **Stephens**, 16 A. 144, 84 S. E. 560.

In admitting irrelevant testimony. **Whitehurst**, 14 A. 209, 80 S. E. 670; **Central Ga. Transmission Co.**, 17 A. 55, 85 S. E. 498; **Brundage**, 14 A. 460, 81 S. E. 384. Though testimony immaterial and irrelevant. **Chandler**, 131/82, 61 S. E. 1036; **Averett**, 131/611, 62 S. E. 1046. Or hearsay. **South Georgia Ry. Co.**, 131/599, 62 S. E. 1042.

In admitting immaterial evidence here. **Allen**, 14 A. 299, 80 S. E. 697.

In excluding. **Carter**, 2 A. 254, 58 S. E. 532; **City of Cedartown**, 2 A. 584, 596, 59 S. E. 836.

In admitting affidavit to account, there being sufficient other proof. **Lackey**, 10 A. 382, 73 S. E. 432.

In admitting testimony which the jury disregarded. **Cobb**, 11 A. 53, 59, 74 S. E. 702.

In allowing witness to state facts as to which he had no adequate knowledge, but to which others testified. **Citizens National L. Ins. Co.**, 13 A. 30, 73 S. E. 683.

Harmless error—(Continued).

In admitting, in view of charge of court restricting effect. **Ga. Ry. & Co.**, 9 A. 107, 70 S. E. 607. Cured by evidence subsequently admitted. **Thompson**, 9 A. 367, 71 S. E. 678.

In admitting testimony too indefinite to have been harmful. **George F. Eubanks Mantel Co.**, 22 A. 497, 96 S. E. 342.

In view of other evidence. **Monaahan**, 4 A. 684, 62 S. E. 127. No reversal for error favorable to complaining party. **Fouraker**, 4 A. 692, 62 S. E. 116.

In admitting, where it did not affect the controlling question in the case. **Citizens and Southern Bank**, 20 A. 153, 92 S. E. 758.

In rejecting, where it would not have strengthened the case of the party offering it. **Hunnicut**, 111/566, 36 S. E. 853.

In view of fact admitted by the objecting party. **Gatlin**, 18 A. 9, 89 S. E. 345. Where the fact sought to be shown was admitted by the objecting party in his pleadings. **Battle**, 107/128, 32 S. E. 838.

In excluding, in view of evidence afterwards admitted. **Bowman**, 19 A. 115, 91 S. E. 215; **Mitchell**, 19 A. 201, 91 S. E. 275.

In admitting, where evidence to same effect was previously admitted without objection. **Selman**, 20 A. 440, 93 S. E. 60.

In admitting, in view of other evidence as to same matter. **Copeland**, 20 A. 217, 92 S. E. 955; **Akridge**, 12 A. 252, 77 S. E. 101; **Jackson**, 12 A. 480, 77 S. E. 651; **Rome Ins. Co.**, 11 A. 539, 75 S. E. 894; **City of Thomasville**, 22 A. 384, 96 S. E. 335; **Chastain**, 22 A. 53, 95 S. E. 473; **Lewis**, 23 A. 647, 99 S. E. 147; **Jones**, 23 A. 725, 99 S. E. 388.

In excluding, in view of evidence admitted, to the same effect. **Shields**, 22 A. 618, 97 S. E. 90; **Orr**, 8 A. 60, 68 S. E. 779; **Mackenzie**, 132/324, 63 S. E. 900, 16 Ann. Cas. 723; **Schroeter**, 16 A. 522, 85 S. E. 787; **Bazemore**, 9 A. 32, 70 S. E. 261;

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Brinkley, 131/226, 62 S. E. 67; **Logan**, 135/367, 69 S. E. 548; **Foreman**, 8 A. 823, 70 S. E. 158; **Cobb**, 11 A. 53, 59, 74 S. E. 702; **Walton**, 11 A. 160, 74 S. E. 1006.

In admitting, in view of other evidence, and of admissions in pleading. **A. & B. R. Co.**, 129/622, 59 S. E. 278.

In admitting evidence for party who made out prima facie case without it. **Christopher**, 22 A. 707, 97 S. E. 97.

In admitting testimony, where legal evidence demanded the verdict. **Bernolak**, 18 A. 7, 89 S. E. 302.

In admitting, where it could not have affected the verdict. **Lowe Co.**, 19 A. 140, 91 S. E. 242.

In excluding, where it does not reasonably appear that the verdict could have been affected thereby. **A. C. L. R. Co.**, 21 A. 704, 706, 94 S. E. 909; **Rich**, 135/394, 69 S. E. 573; **Ginn**, 14 A. 298, 80 S. E. 698; **Supreme Council**, 23 A. 104, 97 S. E. 557; **Stansel**, 16 A. 782, 86 S. E. 412; **Sherman**, 139/781, 78 S. E. 123; **Hopper**, 128/776, 58 S. E. 359; **Quinlan**, 13 A. 669, 79 S. E. 768.

In admitting testimony as to fact practically conceded. **Collins**, 21 A. 542, 94 S. E. 1035.

As to uncontroverted fact. **Alabama R. Co.**, 131/238, 62 S. E. 71; **Ga. R. Co.**, 122/290, 50 S. E. 124. Not operative to prejudice of excepting party. **Williams**, 122/295, 50 S. E. 110.

In admitting, in view of evidence introduced by the objecting party. **Waller**, 22 A. 477, 96 S. E. 333.

In admitting, where objecting party delivers like testimony at present trial. **Heatley**, 135/154, 68 S. E. 783.

Headlight of locomotive, condition of, five miles from place of injury, when relevant. **Central R. Co.**, 127/593, 56 S. E. 770.

Health, impairment of, by injury; relevancy of proof as to aggravation of former injury. **City of Moultrie**, 11 A. 649, 75 S. E. 991.

Admissibility of testimony as to nerv-

ousness in damage suit; newly discovered evidence as to former "nervous spells," requiring new trial. **Ga. So. Ry. Co.**, 5 A. 740, 63 S. E. 525.

Hearing, absence of, as indicating that whistle was not blown, where witness could have heard. **Nashville Ry.**, 134/618, 68 S. E. 432.

As explanatory of conduct. **Leake**, 5 A. 102, 62 S. E. 729.

Non-expert may testify as to whether another was in hearing distance. **Holcombe**, 5 A. 48, 55, 62 S. E. 647.

Highway, establishment of, how shown. **Lovett**, 13 A. 72, 78 S. E. 857.

Homestead, whether property under levy was purchased with income of, or in fraud of creditors of head of family. **Kiser**, 102/429, 30 S. E. 967.

Homicide, admissibility of testimony on trial for, as to position of body and hat of deceased. **Butler**, 142/286, 82 S. E. 654.

Admissibility of testimony of character, conduct, or utterances of decedent, when admissible on trial for homicide. **Powell**, 101/16, 29 S. E. 309, 65 Am. St. R. 277.

By shooting, admissibility of testimony on trial for. **Higgs**, 145/414, 89 S. E. 361.

Conduct and statement of accused immediately after, when not admissible. **Gibbons**, 137/786, 74 S. E. 549.

Evidence as to grade of, considered. **Williams**, 120/872, 48 S. E. 368.

Irrelevant to show whether decedent had license to carry pistol. **Williams**, 145/177, 88 S. E. 958.

Justification of, on reasonable fears; admissibility of evidence of previous assault and threat. **Baker**, 142/619, 83 S. E. 531.

Of former paramour's companion, admissibility of testimony concerning. **Brown**, 141/6, 80 S. E. 320.

Of husband; admissibility of testimony in suit for damages. **Darby**, 144/759, 87 S. E. 1067. See **Davis**, 144/62, 86 S. E. 248.

Of wife, admissibility of evidence on trial for. **Lucas**, 146/315, 91 S. E. 72. See **Criminal Law**.

Horse frightened, testimony admissible that he was roadworthy and not ordinarily subject to fright. *Southern Ry. Co.*, 136/591, 71 S. E. 802.

Nervous and high-strung, provable in action for injury resulting from frightening him. *Shiver*, 143/791, 85 S. E. 1031.

Horse-power and operation of machinery, testimony as to. *International Harvester Co.*, 138/672, 75 S. E. 984. See *Id.* 135/104, 68 S. E. 1093.

House of bad repute was not home of married man therein, who shot man outside, admissible. *Day*, 133/434, 66 S. E. 250.

Husband was sole support, irrelevant in widow's action for his homicide. *Central Ry. Co.*, 142/536, 83 S. E. 117.

Debt, assumption of, by wife; evidence admissible on issue. *Sims*, 2 A. 467, 58 S. E. 693.

Debt of, testimony competent that grantee in wife's deed paid money without notice of. *Gilmore*, 137/272, 73 S. E. 364.

Deed to, from wife procured by imposition, competency of testimony to show. *Gray*, 139/776, 78 S. E. 127.

Expenditure by, on account of injury to wife, testimony of, may comprehend ordinary subsistence. *Nashville Ry.*, 139/300, 76 S. E. 1009.

Negotiation by, for wife, not admissible without evidence of his agency for her. *Bowling*, 142/397, 83 S. E. 112.

Subscription by, for wife to stock, when not admissible to bind her. *Chicago Building & C. Co.*, 139/816, 78 S. E. 244.

Hypothetical question; form of question here was not proper. *Southern Mut. Ins. Co.*, 113/438, 38 S. E. 964.

As to sanity, when permissible. *Glover*, 129/718, 724, 59 S. E. 816.

Excluded if basal facts be illegal and inadmissible. *Central Georgia Power Co.*, 139/420, 77 S. E. 565.

Idem sonans, "Maria" and "Marie," are. *Watkins*, 18 A. 500, 89 S. E. 624. Other instances. *Ib.*

Lovett and Levatte. Determined by pronunciation or by spelling or by both. *Lovett*, 9 A. 232, 70 S. E. 989.

Rule as to; when question for court, and when for jury; and illustrations. *Veal*, 116/592, 42 S. E. 705.

Rawlin and Rolin. *Roland*, 127/401, 56 S. E. 412. Determined by pronunciation, not spelling. *Ib.* 402.

Identification, admissibility of testimony for purpose of. *Mitcham*, 119/184, 45 S. E. 989.

By prisoner's statement to jury, not render thing admissible as evidence. *Register*, 10 A. 623, 74 S. E. 429.

By tracks, etc. *Morris*, 12 A. 810, 78 S. E. 477; *Hawthorne*, 12 A. 811, 78 S. E. 473. By tracks or voice, discussion as to. (See dissent.) *Patton*, 117/230, 235, 43 S. E. 533.

Error in allowing prospective witness, subpoenaed by defendant on trial for receiving stolen goods, to be brought before jury and identified as "the man who had been convicted of stealing" the goods. *Thompson*, 16 A. 832, 84 S. E. 591.

Not sufficient, as to cross-ties. *A. C. L. R. Co.*, 21 A. 85, 94 S. E. 65.

Of accused, and of gun-shells; admissibility of testimony. *Goodwin*, 148/33, 95 S. E. 674.

Of evidence; what necessary, where not contained in brief of evidence approved and filed. *Dolvin*, 134/113, 67 S. E. 541; *Maloy*, 134/435, 68 S. E. 80; *Robinson*, 134/777, 68 S. E. 553.

Of goods without special mark to distinguish them from other goods of same kind stolen from store. *Chandler*, 18 A. 141, 89 S. E. 157; *McCoy*, 18 A. 698, 90 S. E. 355.

Of part of land sued for, to which plaintiff entitled, necessity and sufficiency. *McElroy*, 142/37, 82 S. E. 442.

Of property attempted to be levied on, testimony for, when not admissible. *Sanders*, 124/676, 52 S. E. 887.

Of property described in deed or mortgage. *First National Bank*, 10 A. 503, 504, 73 S. E. 753.

Of stolen goods, by correspondence in quantity, variety, and brand. *Jordan*, 119/443, 46 S. E. 679.

Of things on person of deceased. *Cason*, 134/787, 68 S. E. 554. See *McCray*, 134/421, 68 S. E. 62, 20 Ann. Cas. 101.

Identity of causes of action, test of, whether same evidence will support both. *Underwood*, 139/242, 77 S. E. 46.

Inadmissible testimony as to Bertillon measurements by another. *Oliver*, 7 A. 696, 67 S. E. 886.

Of criminal, relevancy of evidence to show. *Frank*, 141/244, 80 S. E. 1016.

Of name, as indicating identity of person or thing, where the same name appears in different parts of testimony. *Swift*, 8 A. 545, 70 S. E. 97. See *Smith*, 11 A. 89, 74 S. E. 711.

Object pointed out to witness by others, testimony as to, when not admissible. *Evans*, 1 A. 43, 57 S. E. 1020.

Of one substance with another, test of, admissible when. *Standard Oil Co.*, 15 A. 571, 84 S. E. 69.

Of party to case with person referred to in evidence, not shown, verdict based on such identity set aside. *Claxton*, 129/300, 58 S. E. 830.

Of person. *Haynes*, 18 A. 741, 90 S. E. 485. By name alleged and name proved; *Mrs. G. B.*, and *R. S. B.*, wife of *G. B. Weaver*, 116/553, 42 S. E. 745.

Of person committing crime, new trial on account of new evidence as to. *Carson*, 20 A. 82, 92 S. E. 549; *Nolan*, 14 A. 824, 82 S. E. 377.

Of person, not of name, was test on issue whether one served as a grand juror. *Bexley*, 141/1, 80 S. E. 314.

Of person, when provable by testimony of experiment made; and by threats. *Taylor*, 135/622, 70 S. E. 237.

Of pistol being material, testimony of what accused said and his wife did was admissible. *Bexley*, 141/1, 80 S. E. 314.

Of set of harness with that alleged to have been defective, not appearing, testimony irrelevant. *Portner*, 115/171, 42 S. E. 408.

Of title papers, plaintiff in ejectment allowed to give testimony as to. *Alaculsey Lumber Co.*, 146/310, 91 S. E. 104.

Pistol cartridges not sufficiently identified as having been in defendant's possession; error in admitting them. *Nolan*, 14 A. 824, 82 S. E. 377.

"The" treated as meaning "the aforesaid," when. *Swift*, 8 A. 545, 70 S. E. 97.

Idleness, as affecting character of accused. *Griffin*, 15 A. 552, 83 S. E. 871; *Smith*, 15 A. 714, 84 S. E. 159.

Ignorance no shield to one who refrained from following up a clue. *Rivers*, 118/42, 44 S. E. 859. Ignorance of fact may excuse. *Miley*, 118/274, 45 S. E. 245.

Of law no defense; but knowledge of law not always imputed. *Ryan*, 104/78, 30 S. E. 678.

Of meaning of terms in contract, contracting party allowed to testify to, in rebuttal, where recitals therein had been introduced to impeach his testimony. *Brown*, 129/92, 58 S. E. 702.

Illegality of execution, evidence irrelevant on issue as to; that defendant had conveyed, etc. *Harris*, 133/104, 65 S. E. 250.

Illegally obtained, admissible. *Vittillard*, 20 A. 84, 92 S. E. 554; *Stoker*, 23 A. 11, 97 S. E. 273; *Jones*, 21 A. 22, 93 S. E. 514; *Stephens*, 21 A. 151, 94 S. E. 69; *Brooks*, 19 A. 9, 90 S. E. 989; *Martin*, 148/406, 96 S. E. 882; *Hysler*, 148/409, 96 S. E. 884; *Groce*, 148/520, 97 S. E. 525. *Hornbuckle*, 18 A. 17, 88 S. E. 748. Illegal seizure and search, as ground for excluding; immaterial error in admitting. *Akridge*, 12 A. 252, 77 S. E. 101.

Illegal testimony, tender of, not cause for mistrial, when. *Herring*, 10 A. 88, 72 S. E. 600.

Admitted without objection, not authorize introduction of illegal rebut-

ting testimony, over objection. **Stapleton**, 111/848, 36 S. E. 428.

Received without objection, no reason for receiving such from other side over objection. **Bullard**, 118/920, 45 S. E. 711.

Not objected to before verdict, no ground for new trial. **Williams**, 7 A. 34, 65 S. E. 1097; **Davis**, 4 A. 318, 61 S. E. 404; **Hutchinson**, 8 A. 684, 70 S. E. 63.

Though admitted without objection, had no probative value. **Suttles**, 117/215, 216, 43 S. E. 486.

Ill feeling of accused toward decedent, not illustrated by conversation more than one year before. **Scrutchens**, 146/189, 91 S. E. 25.

Illness or pain, evidence as to, relevant, as explaining conduct here. **Central Ry. Co.**, 18 A. 114, 88 S. E. 1003.

Of woman at time burglar entered her room, irrelevant. **Aiken**, 16 A. 848, 86 S. E. 1076.

Illustrative of condition and conduct of accused, when admissible. **Coleman**, 3 A. 299, 59 S. E. 829.

Of material issues, not open to objections taken. **Groover**, 148/794, 98 S. E. 503; **Eisfeldt**, 148/828, 98 S. E. 495.

Of no issue, incompetent. **Peagler**, 143/11, 84 S. E. 59, Ann. Cas. 1917A, 232.

Immaterial or irrelevant, no error to reject. **Derrick**, 114/81, 39 S. E. 924; **Waller**, 114/383, 40 S. E. 254.

Admission of, was no ground for new trial. **Southern Ry. Co.**, 1 A. 736, 58 S. E. 244; **Dyson**, 130/573, 61 S. E. 468, 124 Am. St. R. 179; **Abercrombie**, 130/680, 61 S. E. 532; **Raleigh R. Co.**, 113/868, 39 S. E. 555.

Exclusion of, no reversible error. **Ray**, 110/818, 36 S. E. 242.

Not illustrative of issue, excluded. **Folks**, 135/179, 69 S. E. 24.

Not tending to harm, no cause for new trial. **Watson**, 136/236, 71 S. E. 122; **Chandler**, 131/82, 61 S. E. 1036; **Brackett**, 127/672, 56 S. E. 762.

On petition to restrain writ of possession, that incompetent evidence was admitted on ejectment trial. **Keen**, 136/194, 71 S. E. 141.

Implication of relation of landlord and tenant, rule as to. **Lenney**, 118/721, 45 S. E. 593.

Improvements, on faith of parol gift of land, after donor's death, evidence as to, when admissible. **Walker**, 117/733, 45 S. E. 387.

Inadmissibility of, as to one defendant, no cause for excluding as to the other. **Becker**, 133/864, 67 S. E. 92.

Incidents later than that in issue, admissibility of. **Ga. &c. Ry. Co.**, 133/137, 65 S. E. 381.

Incompetent, need not be excluded unless that objection be specially raised. **Monahan**, 4 A. 681, 62 S. E. 127. Conviction based on, not set aside, when. **Davis**, 4 A. 318, 61 S. E. 404.

Not objected to at trial, may support verdict. **Hutchinson**, 8 A. 684, 70 S. E. 63.

Tending to discredit immaterial testimony, no reversible error to admit. **Mayes**, 108/787, 33 S. E. 811.

Incumbered property not marketable, when immaterial. **Horne**, 110/362, 35 S. E. 715, 49 L. R. A. (N. S.) 176.

Indecency of, as ground for excluding spectators from trial; right of accused to public trial, violated by excluding "every one not connected with the case." **Tilton**, 5 A. 59, 62 S. E. 651.

Indefiniteness of, not require exclusion, when. **O'Brien**, 14 A. 333, 80 S. E. 864.

As to time, etc., not render testimony here irrelevant. **Sivell**, 115/667, 42 S. E. 151.

As to amount due, precluded finding as to any amount. **Bass**, 113/266, 38 S. E. 834.

No reversal because of admission of testimony too indefinite to be harmful. **George F. Eubanks Mantel Co.**, 22 A. 497, 96 S. E. 342.

Independent and irrelevant matters excluded. **Coleman**, 141/739, 82 S. E. 227.

Indirect evidence, testimony as to indirect mode of committing crime was not. *Holt*, 7 A. 77, 66 S. E. 279.

Indorsement, evidence of purpose in entering, when no basis of defense against taker without notice. *Winnabago Bank*, 145/239, 88 S. E. 973.

Need not be proved unless denied by sworn plea of non est factum. *Kirby*, 12 A. 157, 76 S. E. 996; *Neal*, 124/511, 52 S. E. 622; *Spiller-Beall Co.*, 18 A. 450, 89 S. E. 587; *Butler*, 13 A. 35, 78 S. E. 772.

Whether admissible to show by parol that it was merely for accommodation. *Phillips*, 144/704, 87 S. E. 1059.

Of note before delivery to payee when open to parol explanation. *Atkinson*, 103/508, 30 S. E. 599.

Of note, special purpose of, explainable by parol. *Goette*, 128/180, 57 S. E. 308.

See Bills and Notes.

Inducement, admissibility of resolution as matter of; though not sufficient to show contract. *Strickland*, 141/577, 81 S. E. 886.

Inferior or weaker, relied on by party having more certain or satisfactory; when rule not applied. *Tuggle*, 127/290, 56 S. E. 406.

Influence of testator's mother over him, admissibility of testimony tending to show. *Gordon*, 141/347, 80 S. E. 1007.

Injunction against injury, testimony on hearing for, admissible in disproof of contention. *Watters*, 133/641, 66 S. E. 884.

Affidavit offered after hearing and before decision, may be repelled. *Green*, 126/274, 55 S. E. 45, 7 Ann. Cas. 1069.

Improper admission of evidence may have force in reversing grant of. *Richmond Cotton Oil Mills*, 134/472, 67 S. E. 1126.

Oral testimony may be heard at hearing for, in judge's discretion. *Chatanooga & C. Ry. Co.*, 140/769, 79 S. E. 903; *Cassidy*, 140/849, 80 S. E. 1.

Injuries, as to nature of, admitted, as tending to show cause. *Wilson*, 19 A.

759, 92 S. E. 309; *Gunter*, 19 A. 772, 92 S. E. 314.

Admissibility of evidence as to physical injuries not specifically described in petition. *Atlanta R. Co.*, 117/181, 43 S. E. 425.

Manner of sustaining, may be illustrated by showing particular acts of defendant, though not detailed in the petition. *Central Ry. Co.*, 116/13, 42 S. E. 229.

Innkeeper's oral warning to guest, held irrelevant on issue whether rule duly posted as provided. *McBride*, 134/608, 68 S. E. 321.

Insanity, admissibility of testimony on issue of, on trial for homicide. *Strickland*, 137/115, 72 S. E. 922.

Circumstances tending to show. *Ca. L. Ins. Co.*, 12 A. 855, 78 S. E. 1115.

Evidence as to, not showing time of, properly rejected here. *Sweeney*, 121/293, 48 S. E. 984.

Of applicant for alimony, error in excluding testimony as to, on ground stated. *Arnold*, 141/158, 80 S. E. 652.

Proper cross-examination of witness as to. *Polk*, 18 A. 324, 89 S. E. 437.

Simulation of, by prisoner, when admissible. *Maxwell*, 146/10, 90 S. E. 279.

Suicide as evidence of. *Buchanan*, 103/92, 29 S. E. 608.

Insolvency or solvency, how proved. *Moore*, 128/91, 95, 57 S. E. 110. Assignment made by president and cashier of bank, without knowledge of directors, admissible as an admission or circumstance tending to show. *McGregor*, 128/585, 58 S. E. 28, 13 L. R. A. (N. S.) 185.

Admissibility of testimony as to. *Spence*, 20 A. 63, 92 S. E. 555.

Error in excluding evidence to prove, how cured. Evidence not sufficient to prove. *Hawes*, 124/568, 571, 52 S. E. 922.

Failure to make tax-return, as evidence of. *Vizard*, 117/69, 43 S. E. 426.

Of bank; admissible evidence on trial of director. *Stapleton*, 19 A. 37,

38, 90 S. E. 1029. Admissibility of testimony as to what would constitute insolvency. *Ib.* 38.

Insurance agent represented that adjuster was a gentleman of highest honor in whom plaintiff could absolutely rely, irrelevant to issue of fraud in settlement. *Howard*, 102/137, 29 S. E. 143.

Admissibility of evidence on issue as to waiver of forfeiture etc. *Sovereign Camp*, 143/559, 560, 85 S. E. 827.

Agent's knowledge of status of title, admissibility of testimony showing. *Atlas Assurance Co.*, 144/306, 87 S. E. 1.

Agent's oral permission for additional insurance, testimony as to, properly rejected. *Lippman*, 108/393, 33 S. E. 897.

Agent's waiver of condition in policy after its issuance, testimony not admissible to show. *Peoples Bank*, 146/514, 91 S. E. 684.

On property destroyed by fire, testimony as to, not admissible in defense of action against tort-feasor. *Barrett*, 144/47, 85 S. E. 1016.

Physician's statement in proof of death, admissible against beneficiary suing on policy. *Fair*, 5 A. 708, 63 S. E. 812.

Value of goods, admissible for what purpose. *Ryals*, 106/525, 32 S. E. 645.

Insurer's superintendent, admissibility of testimony as to interview by. *Torbert*, 141/773, 82 S. E. 134.

Inquest, refusal of commissioners to pay for holding, irrelevant on trial for homicide. *Butler*, 142/286, 82 S. E. 654.

Intent criminal, law of. *Crawford*, 2 A. 188, 58 S. E. 301; *Mosely*, 2 A. 191, 58 S. E. 298; *Goddard*, 2 A. 154, 58 S. E. 304; *Ager*, 2 A. 158, 58 S. E. 374; *Cooper*, 2 A. 730, 59 S. E. 20; *Ransom*, 2 A. 826, 59 S. E. 101. Intention and purpose at time of homicide, testimony illustrating. *Rouse*, 135/228, 69 S. E. 180.

Circumstantial evidence as to. *Central Ry. Co.*, 6 A. 37, 64 S. E. 300.

Intent—(Continued).

Evidence of commission of other crimes as tending to show. *Frank*, 141/244, 297, 80 S. E. 1016.

Former criminal acts, as tending to show. *Lee*, 8 A. 413, 69 S. E. 310; *McDuffie*, 17 A. 343, 86 S. E. 821.

Former transactions as tending to show. *Clarke*, 5 A. 95, 62 S. E. 663.

Grantor in deed to his wife may testify to his own, where creditor attacks conveyance. *Kirkman*, 145/452, 89 S. E. 411.

Illustrated by statements of accused, as to ownership of property alleged to have been stolen. *Clanton*, 17 A. 474, 87 S. E. 691.

In doing act, immaterial if the legal consequences of the act are fixed by law. *Connor*, 7 A. 154, 66 S. E. 546.

Inferable from acts interpreted in light of circumstances. *Gaston*, 120/519, 48 S. E. 188.

Inference that natural consequences of act are intended. *Gaynor*, 12 A. 601, 77 S. E. 1072.

In making contract, illustrated by another contract. *White*, 17 A. 551, 87 S. E. 831.

As to conveyance (voluntary or otherwise), how ascertained. *Shackelford*, 135/30, 68 S. E. 838.

As to date of contract, how shown. *Löffler*, 1 A. 63, 57 S. E. 911.

As to title to draft deposited and its proceeds, an issue for jury. *Baldwin Bank*, 144/181, 86 S. E. 538.

Different from that expressed in written contract, admissibility of testimony as to. *Wright*, 137/52, 72 S. E. 412.

Examination of injured person, as illustrating whether his movement was voluntary. *Girvin*, 143/763, 85 S. E. 922.

How manifested. Witness may testify what his intention was. *Alexander*, 118/28, 44 S. E. 851.

In shooting from inside of house at person outside; admissibility of testimony. *Day*, 133/434, 66 S. E. 250.

Intent—(Continued).

Not to convey certain land covered by description in deed, not admissible. **Oliver, 102/157, 29 S. E. 159.**

Of accused, illustrated by shooting other person immediately preceding homicide of accused's wife. **Lampkin, 145/40, 88 S. E. 563.**

Of another, testimony as to, properly excluded. **Carey, 119/92, 45 S. E. 998.**

Of grantor and testator. **Cato, 112/139, 37 S. E. 183.**

Of grantor in deed not illustrated by inventory made by her administrator after her death. **Lewman, 132/485, 64 S. E. 544.**

Of maker of deed, admissibility of other documentary evidence and his declarations, to show. **Cohen, 105/339, 31 S. E. 205.**

Of maker of instrument (deed or will), extraneous evidence to ascertain. **Collier, 146/476, 91 S. E. 551.**

Of parties at time of making contract, testimony as to, inadmissible, where contract unambiguous. **McWhorter, 123/251, 51 S. E. 288.**

Other acts than that charged, admissible to illustrate intent, when. **Carter, 15 A. 343, 83 S. E. 153; Wilensky, 15 A. 360, 83 S. E. 276.**

Other transaction tending to show. **Saffold, 11 A. 329, 75 S. E. 338; McCrory, 11 A. 788, 76 S. E. 163; Fite, 11 A. 666, 76 S. E. 397.**

Of parties to affray, how proved. **Robinson, 118/198, 44 S. E. 985.**

Of testator, scrivener of will not competent to testify to. **Napier, 137/242, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013.**

Party's testimony of his own, in signing unambiguous agreement, not admissible. **Blakely Oil Co., 134/139, 67 S. E. 389.**

Undisclosed, when witness not allowed to state, in contradiction of written words. **George W. Muller Co., 145/484, 89 S. E. 615.** Intent or motive of witness, proper subject of inquiry. **Billings, 8 A. 672, 70 S. E. 36.**

Intent—(Continued).

Shown by proof of ability and opportunity to know. **Rivers, 118/42, 44 S. E. 859.** Necessary to render one an accomplice. **Walker, 118/758, 45 S. E. 608.**

To change domicile. **Knight, 112/828, 38 S. E. 206.**

To dedicate land to public use, how shown. **East Atlanta Land Co., 138/380, 389, 75 S. E. 418; see Ellis, 138/181, 182, 75 S. E. 99.**

To deliver deed, grantor may testify to. **Toole, 107/478, 33 S. E. 686.**

To pay for services, testimony admissible to illustrate question of. **Jackson, 132/56, 63 S. E. 823.**

To revoke will, testimony as to, inadmissible, when. **Howard, 115/361, 41 S. E. 638, 90 Am. St. R. 121.**

Undisclosed, in taking acceptance of draft, not admissible to affect rights of another. **Southern R. Co., 103/187, 29 S. E. 816.**

Known habit, as tending to show absence of larcenous intent. **Southern Ry. Co., 6 A. 43, 64 S. E. 308.**

May be inferred from homicide with weapon; must be proved where homicide did not result. **Futch, 137/75, 72 S. E. 911.**

Of blank indorsement of note, for plea and proof. **Saussy, 122/70, 49 S. E. 809.**

Often presumed from conduct; and when not allowable to prove private purpose, in rebuttal. **Alabama Construction Co., 131/371, 62 S. E. 160.**

Of writer, his testimony as to, rejected. **Willingham, 113/953, 39 S. E. 314.**

Shown by circumstances. **Furr, 3 A. 188, 59 S. E. 596; Little, 3 A. 442, 60 S. E. 113.** Doubt as to. **Warnack, 3 A. 590, 60 S. E. 288.**

Shown by conduct before and after lease of house used for unlawful purpose. **Kessler, 126/726, 55 S. E. 963, 8 Ann. Cas. 180.**

To defraud, inferable from circumstances. **Lane, 140/415, 78 S. E. 1082.**

Undisclosed, not material for consideration, without evidence that op-

posite party knew of it. **McCord**, 140/171, 78 S. E. 833.

Interest at eight per cent., admissibility of evidence in connection with parol agreement to pay. **Strickland**, 141/566, 81 S. E. 886.

Fact of, not shown by testimony that person was offered a sum of money therefor. **Hurt**, 140/743, 79 S. E. 775.

Interlocutory hearing for injunction, rules of admission and exclusion not so rigidly enforced on, as on final trial. **Southern Cotton Oil Co.**, 136/69, 70 S. E. 664; **Wilson**, 141/790, 791, 82 S. E. 241; **Richmond Cotton Oil Co.**, 134/472, 67 S. E. 1126.

Evidence on, must be embodied in bill of exceptions, or in approved brief of evidence. **Kennedy**, 145/292, 88 S. E. 974.

Interstate-commerce law, as affecting disclosure of facts by carrier, as to interstate shipments. **Ezell**, 13 A. 95, 98, 78 S. E. 850. Interstate passengers, that train carried, when irrelevant. **Georgia R. &c. Co.**, 142/516, 83 S. E. 127.

Intestate's request that land remain as it was until his wife's death, inadmissibility of. **Smith**, 141/630, 81 S. E. 895.

Intoxication, proof of. **Teal**, 17 A. 556, 87 S. E. 830.

Admissibility of evidence as to conviction in police court, on issue in regard to. **Curtis**, 18 A. 145, 88 S. E. 997.

Evidence as to a person's habitual use of intoxicants and their effect on him, admitted, as tending to show the cause of his condition when found lying in a highway. **Howell**, 14 A. 414, 81 S. E. 247.

Of one accused of homicide, when arrested soon after the killing, admissibility of evidence as to. **Mulligan**, 18 A. 465, 471, 89 S. E. 541.

Testimony that a person "seemed to be drinking" at 2:30 o'clock, p. m., admitted, on issue as to whether he was drunk at sundown the same day. **Suggs**, 9 A. 830, 72 S. E. 287.

That wine sold was not intoxicating, admissible. **Loid**, 104/726, 30 S. E. 949.

One drinking liquid could testify to intoxicating effect, though denying that it intoxicated him. **Wilcox**, 8 A. 536, 69 S. E. 1086.

Introduction of motion and amendment in evidence, not shown by statement that they were "put in" at hearing. **Frey**, 145/110, 88 S. E. 567.

Subject to specified objections; no question as to admissibility was raised by bill of exceptions reciting that certain evidence was so introduced. **Camp**, 129/411, 58 S. E. 870.

Irrelevant and harmful, on trial for crime, that the act in question took place at the time and place of another crime. **Fleming**, 125/17, 53 S. E. 579. Irrelevant and immaterial, admission of, may not require new trial. **Arnold**, 139/495, 77 S. E. 579. Irrelevant and immaterial, excluded. **Taylor**, 106/248, 32 S. E. 153.

Admission of, no ground for new trial, if not prejudicial or misleading. **Elliott**, 132/758, 64 S. E. 1090; **Norton**, 134/21, 67 S. E. 425; **Central Ry. Co.**, 144/92, 86 S. E. 228; **Carter**, 2 A. 255, 58 S. E. 532; **Alaculsey Lumber Co.**, 146/310, 91 S. E. 104; **Warner**, 124/387, 52 S. E. 446, 4 Ann. Cas. 180; **Fountain**, 23 A. 119, 98 S. E. 178; **Johnson**, 128/71, 57 S. E. 84; **Orr**, 145/137, 88 S. E. 669; **Central Ga. Transmission Co.**, 17 A. 55, 85 S. E. 498; **Johnson**, 139/219, 77 S. E. 73; **McWhorter**, 123/247, 51 S. E. 288; **Glauson**, 21 A. 97, 94 S. E. 77; **Walters**, 137/475, 73 S. E. 653; **Madden**, 137/555, 73 S. E. 825; **McLean**, 127/579, 56 S. E. 643. Irrelevant or hearsay, which does not relate to party and can not harm him, ordinarily not ground for reversal. **Hutchinson**, 5 A. 598, 63 S. E. 597.

Admitted, no cause new trial, if objection was not good. **Southern Pine Co.**, 113/629, 38 S. E. 960.

Irrelevant—(Continued).

Admitted over objection, ordinarily not cause new trial, unless from its peculiar nature or from the assignment of error a prejudicial effect is apparent. *Trav. Ins. Co.*, 119/455, 46 S. E. 678; *Brown*, 119/572, 46 S. E. 833. Not cause new trial here. *Eq. M. Co.*, 119/337, 46 S. E. 437.

As to facts not shown to have been brought to knowledge of accused here. *Gossett*, 123/431, 51 S. E. 394.

As to shotgun picked up at place of homicide; new trial not required by error in admitting. *Folsom*, 14 A. 245, 80 S. E. 677.

As to what occurred between one of the parties and a third person in regard to a similar transaction to that involved in the case. *Merchants Bank*, 113/306, 38 S. E. 826.

At first; no reversal for admitting, if relevant at later stage of the trial. *Holland*, 148/277, 96 S. E. 419.

Becoming relevant in the light of developments following its exclusion, should be reoffered. *McLeod*, 128/17, 57 S. E. 83; *Horton*, 128/26, 57 S. E. 224.

But not sufficiently material to require a reversal of the judgment. *Hood*, 134/145, 76 S. E. 864; *Whatley*, 139/149, 76 S. E. 1025.

Claim affidavit was, in case as to the same property between other than the claimant. *Equitable Securities Co.*, 113/1013, 39 S. E. 434.

Error in admitting, harmless, where legal evidence demanded the verdict. *Bernolak*, 18 A. 7, 89 S. E. 302.

Error in admitting, immaterial, in view of other evidence. *Jackson*, 12 A. 480, 77 S. E. 651.

Error in admitting, no ground for new trial, when harmless. *G., F. & A. R. Co.*, 12 A. 181, 76 S. E. 1063.

Error in admitting, not shown to be harmful. *Glauson*, 21 A. 97, 94 S. E. 77.

Error in admitting, presumed prejudicial here. *Williams*, 16 A. 34, 84 S. E. 494.

Error in admitting; no ground for new trial, where no reasonable likeli-

Irrelevant—(Continued).

hood of a prejudicial effect appears. *Armour Fertilizer Works*, 22 A. 145, 95 S. E. 746.

Error in admitting, not so prejudicial as to require new trial. *Shealy*, 138/23, 74 S. E. 689.

Evidence tending to establish any part of plaintiff's case, or dispute any defense set up, is not irrelevant. *International Harvester Co.*, 19 A. 721, 92 S. E. 35.

For one purpose, relevant for another, no error in admitting. *Mona-han*, 4 A. 681, 62 S. E. 127.

Harmless error in admitting. *Turner*, 138/808, 76 S. E. 349; *Smith*, 15 A. 713, 84 S. E. 159.

In construing contract between partners; letter of partner authorizing drafts by copartner was. *Huger*, 126/684, 56 S. E. 64.

In part, objection should point out that part. *Southern Ry. Co.*, 115/602, 41 S. E. 1013; *Southern Ry. Co.*, 115/890, 42 S. E. 220.

Judgment reversed because of admission of, here. *Sumner*, 117/229, 43 S. E. 485.

May be disregarded by judge in directing verdict, though admitted without objection. *Cook*, 17 A. 543, 87 S. E. 832.

New trial not necessarily granted for admission of. *Cook*, 134/347, 348, 67 S. E. 812. Irrelevant question, but admissible answer, no error for reversal. *Atlanta R. Co.*, 122/83, 49 S. E. 818.

No error in excluding. *Davis*, 137/451, 73 S. E. 579.

No error in rejection of testimony not throwing light on any issue made by the pleadings. *Pirkle*, 113/828, 39 S. E. 289.

No foundation of impeachment. *Atlanta Ry. Co.*, 118/449, 45 S. E. 494.

Not if it tends to prove an allegation of plaintiff's petition, or to dispute a defense set up. *Tifton Ry. Co.*, 4 A. 191, 60 S. E. 1087.

Not of such materiality as to require new trial for admitting. *Crawley*, 137/

Irrelevant—(Continued).

778, 74 S. E. 537; **Wadley Ry. Co.**, 137/498, 73 S. E. 741.

Not shown to have been harmful. **Whitley**, 8 A. 165, 68 S. E. 863. Circumstances impressing fact on mind of witness, not excluded as irrelevant. **Miliken**, 8 A. 479, 69 S. E. 915.

Objection that evidence is, does not raise question as to genuineness of signature. **Hickman**, 10 A. 320, 73 S. E. 596.

Objection to consideration of, waived by failure to object to introduction. **Savannah Chemical Co.**, 14 A. 371, 377, 80 S. E. 858.

Objection to, not prevented by producing on notice. **Fraternal Relief Asso.**, 9 A. 45, 70 S. E. 265.

Objection to, waived by cross-examination on, and not moving to exclude. **Pines**, 15 A. 348, 83 S. E. 198.

Of no probative value. **Minnesota Co.**, 122/22, 49 S. E. 783. Should be excluded. **Atlanta Land Co.**, 122/374, 50 S. E. 124; **Johnson**, 122/670, 50 S. E. 488.

On question of damage to female passenger landed in wrong place at night, testimony here was. **Dorsey**, 113/565, 38 S. E. 958.

Ordinarily not cause for reversal. **Savannah Elec. Co.**, 6 A. 374, 65 S. E. 50. Reversible error in admitting. **Ib. Gossett**, 6 A. 439, 65 S. E. 162; **Guin**, 6 A. 484, 65 S. E. 330.

Ordinarily not cause for reversal, but presumed harmful where charge of court gave it probative force. **Alexander**, 7 A. 88, 66 S. E. 274.

Practice where statement voluntarily made by witness. **Jackson**, 135/684, 70 S. E. 245.

Prejudicial here. **First National Bank**, 10 A. 505, 73 S. E. 753.

Presumption of harm from admission of. **Williams**, 16 A. 34, 84 S. E. 494.

Properly excluded. **Brackett**, 127/672, 56 S. E. 762; **Teasley**, 120/373, 47 S. E. 925. No reversal for admission of, unless injury appear. **Central Ry. Co.**, 120/479, 47 S. E. 956.

V. II—44.

Irrelevant—(Continued).

Properly excluded; transaction was one or two years before homicide. **Green**, 124/344, 52 S. E. 431. Subsequent conduct of person stabbed. **Morgan**, 124/442, 52 S. E. 748.

Provoked by question of counsel for accused, no cause for new trial, when not prejudicial. **Frank**, 141/245, 80 S. E. 1016.

Separation of, from relevant, duty on party offering. **Ellis**, 109/422, 34 S. E. 567; **Smith**, 113/80, 38 S. E. 812.

Irrelevant parts not pointed out, no reversal for admitting whole. **Brown**, 147/498, 94 S. E. 759; **Freeman**, 147/700, 95 S. E. 236.

Statements not prima facie relevant, admitted as res gestæ of a relevant conversation. **Holcombe**, 5 A. 48, 55, 62 S. E. 647.

Tending to arouse prejudice against party, error in admitting, not of itself sufficient for reversal here. **Wilson**, 9 A. 275, 290, 70 S. E. 1128.

Admission of, ground for new trial in murder case. **Worley**, 138/336, 75 S. E. 240.

Apparently intended to give argumentative support to previous testimony of the same witness, properly excluded. **Toole**, 13 A. 123, 78 S. E. 865.

Not objected to, court may instruct jury to disregard. **Bradley**, 121/201, 48 S. E. 981.

That could not affect verdict, admission of, no cause for new trial. **Strickland**, 137/115, 72 S. E. 922.

That a witness was testifying in court for the first time was irrelevant. **Dunn**, 16 A. 984, 84 S. E. 488.

That wife contracted on her own account in renting, when the issue was whether credit for goods sold was extended to her or to husband. **Hughes**, 121/499, 49 S. E. 590.

That witness was riding with a woman not his wife. **Clay**, 4 A. 148, 60 S. E. 1028.

Prejudicial, admission of, is ground for new trial. **Gunn**, 116/325, 42 S. E. 343. Harmless, no reversal for admit-

Irrelevant—(Continued).

ting. *Central Ry. Co.*, 116/346, 42 S. E. 510.

Cotton bill signed by third person, not connected with note sued on. *Bird*, 127/371, 56 S. E. 450.

To one count of indictment, relevant to another count, admitted. *Reddick*, 15 A. 437, 83 S. E. 675.

Waiver of objection to, by examination of witness as to same matter. *Howard*, 18 A. 6, 7, 89 S. E. 443.

When not rendered competent by answers given by witness to objectionable questions. *Wheeler*, 148/508, 97 S. E. 408.

Withdrawal of irrelevant testimony after introduction of rebutting testimony. *Andrews*, 15 A. 103, 82 S. E. 636.

Issue not illustrated by, properly excluded. *Harris*, 142/298, 82 S. E. 902.

Not presented by plea, made by evidence admitted without objection. *Parsons*, 22 A. 279, 95 S. E. 878.

Of non-intent of defendant's liability, not submitted, though testimony received without objection. *Hewett*, 146/634, 92 S. E. 56.

Itemized statement of payments, defendant not harmed by introduction of, by plaintiff. *Watkins*, 14 A. 321, 80 S. E. 694.

Jealousy as to attentions paid to woman by others, admissibility of evidence as to, in murder case. *Jones*, 117/325, 43 S. E. 715.

Joint defendant's acts, evidence of, when admissible on trial of codefendant under indictment for forcible detainer. *Lewis*, 105/657, 31 S. E. 576.

Judge's remarks on, in presence of jury, when not error. *Glover*, 120/720, 59 S. E. 816. Statement as to what was testified, when not improper. *Raven*, 125/58, 53 S. E. 816. Judicial approval or disparagement of, should be avoided in presence of jury. *Sharpton*, 1 A. 542, 57 S. E. 929.

Judgment conformed to, though it might have been excluded on objection. *Harris*, 102/154, 29 S. E. 162.

Inadmissibility of evidence to disprove allegations on which based. *Propper*, 136/788, 72 S. E. 242.

Of court of competent jurisdiction, unreversed, not impeached by evidence. *Kennedy*, 127/68, 56 S. E. 243, 9 Ann. Cas. 936.

Of court of general jurisdiction, need not set forth the evidence on which it is based. *McFarland*, 143/598, 85 S. E. 758.

Jurisdiction, conflict of evidence as to, of corporation sued. *Kimsey*, 136/369, 71 S. E. 675.

Testimony to show want of, inadmissible where no plea to jurisdiction. *Morris*, 2 A. 61, 58 S. E. 316.

Juror's competency who has qualified on voir dire; further questions to him may be excluded by court as prior. *Chapman*, 148/531, 97 S. E. 546.

Jury allowed to take articles to jury-room, for inspection, not error, when. *Unica*, 7 A. 27, 31, 66 S. E. 24.

Query of, as to examination of articles, prejudicial error in judge's answer to. *Groce*, 147/672, 95 S. E. 234.

Allowed to take to their room letters admitted in evidence and read to them; different rule as to depositions. *Rudolph*, 16 A. 354, 85 S. E. 365.

Justification, plea of, covers facts inadmissible under general issue. *Central R. Co.*, 110/171, 35 S. E. 345.

Kerosene, admissibility of test as to. *Standard Oil Co.*, 15 A. 571, 84 S. E. 69.

Knowledge and acquiescence in conveyance, materiality of testimony tending to show. *Wheeler*, 139/604, 77 S. E. 875.

Admissibility of testimony to show want of, by corporation. *Potts-Thompson Co.*, 135/452, 69 S. E. 734.

Gist of offense, anything going to show, admissible, regardless of when acquired. *Bashinski*, 122/164, 50 S. E. 54.

Of deed, what inadmissible to show want of, or to show refusal to accept. *Brinkley*, 131/226, 62 S. E. 67.

Of illegal purpose of another, how shown. *Kessler*, 126/726, 55 S. E. 963, 8 Ann. Cas. 180.

Of witness as to character of deceased, except as gleaned from reputation, excluded. *Powell*, 101/10, 29 S. E. 309.

Presumed from ability and opportunity to know. *Rivers*, 118/42, 44 S. E. 859. Presence or absence thereof may appear from circumstances as well as directly. *McDonnell*, 118/91, 44 S. E. 840. Compare *Miley*, 118/274, 45 S. E. 245.

Proof of scienter, when necessary, in action for injury by domestic animal. *Browder-Manget Co.*, 138/277, 75 S. E. 243.

Reputation and other circumstances tending to show. *Fitzgerald*, 10 A. 71, 72, 72 S. E. 541.

Labor ability, as bearing on contribution of disease to accidental injury. *Thorn-ton*, 116/133, 42 S. E. 287, 94 Am. St. R. 99.

Laborer, facts and circumstances for consideration in determining whether employee is to be classed as. *Howell*, 3 A. 58, 59 S. E. 316.

Land adjoining that sold, character and value of, when irrelevant in suit for balance of purchase-price. *Walker*, 112/413, 37 S. E. 749.

Apportionment for deficiency in acreage of. Irrelevant that certain parts are more valuable. *Adams*, 138/306, 75 S. E. 321.

Heir could testify that he bought and paid for, on issue whether conveyance was advancement. *Bland*, 138/712, 76 S. E. 50.

Decline in value of, after purchase-money note matured, immaterial in suit thereon. *Horne*, 110/362, 35 S. E. 715, 49 L. R. A. (N. S.) 176.

Sales in neighborhood, admissibility of evidence as to, on issue as to value. *Flemister*, 140/516, 79 S. E. 148.

Landlord and tenant; admissibility of evidence on trial of eviction proceeding. *Stanley*, 140/750, 79 S. E. 842.

Language of judge in admitting, when error for reversal; and when not. *Mayor*

&c. of *Americus*, 3 A. 159, 59 S. E. 434; *Martin*, 3 A. 784, 60 S. E. 825.

Lascivious, lecherous, and libidinous conduct, relevancy of testimony as to, on trial for murder. *Frank*, 141/244, 80 S. E. 1016; Lascivious conduct as tending to show subsequent sexual intercourse. *Bass*, 103/227, 29 S. E. 966.

Law of another State, proof of. *Thomas*, 125/77, 54 S. E. 77, 6 L. R. A. (N. S.) 658; *Mo. Ins. Co.*, 1 A. 456, 58 S. E. 393.

Decision by Supreme Court thereof, when error to admit evidence showing. *Pattillo*, 105/482, 30 S. E. 644.

Plea and proof of, when essential to action or defense. *Southern Express Co.*, 134/446, 67 S. E. 944, 137 Am. St. R. 227.

Presumed to continue of force, until contrary shown. *Seaboard Ry.* 117/98, 43 S. E. 494.

Proof of, when unnecessary. *Mo. Ins. Co.*, 1 A. 446, 58 S. E. 93.

Section may be introduced without cognate sections. *Southern Ry. Co.*, 7 A. 154, 66 S. E. 535.

Testimony of attorney explaining, not subject to objection presented. *Hope*, 142/311, 82 S. E. 929.

Court in extradition case not restricted to formal proof of, in ascertaining. *Barranger*, 103/466, 30 S. E. 524.

When must be proved. *Norman*, 113/125, 38 S. E. 317.

Legitimacy of caveatrix, testator's expression of doubt as to, when admissible. *Gordon*, 141/347, 80 S. E. 1007.

Letters, habit of stamping before mailing, testimony as to, admitted, as tending to show that one was stamped. *Burch*, 125/158, 53 S. E. 1008. Testimony as to mailing letter, not harmful, where there was no evidence as to contents or purpose of. *Zoucks*, 19 A. 744, 32 S. E. 228. Letter sent, fact admissible without introducing the letter. *Clarke*, 115/883, 42 S. E. 264.

Levy made on barrels, evidence of their contents admissible. *Parham*, 127/303, 56 S. E. 460.

Lewdness, discrediting female witness by proof of reputation for. *Cripe*, 4 A. 832, 62 S. E. 567.

Libel or slander, truth of charge proved in justification. *Cox*, 101/482, 28 S. E. 655.

Injurious effect of, on feeling of members of family of person libeled, evidence as to, properly rejected. *Sheftall*, 123/598, 51 S. E. 646.

Competency of evidence as to injury to business standing, under allegations by way of innuendo. *Weatherholt*, 143/41, 84 S. E. 119.

Proof of special damages, when necessary; and when general damages recoverable. *Weatherholt*, 143/41, 42, 84 S. E. 119.

Refusal of credit to plaintiff by report of him as delinquent debtor, admissible on trial of action for. *W. U. Tel. Co.*, 108/412, 34 S. E. 216.

Liberality in allowing, when favored. *Ellenberg*, 5 A. 392, 63 S. E. 240.

Lien, evidence that plaintiff was not entitled to, was not authorized by counter-affidavit here. *Misenheimer*, 11 A. 509, 75 S. E. 884.

Of materialman, what admissible in defense to foreclosure of. *Tuck*, 127/731, 56 S. E. 1001.

Limitation of effect, to a single purpose, not effected by counsel's statement that it is introduced for that purpose; instruction by court necessary. *Thompson*, 16 A. 832, 84 S. E. 591. Instruction to jury should be requested. *Baldwin*, 138/350, 75 S. E. 324.

Of purpose for which lease contract was admitted, held harmful error. *Moate*, 146/430, 91 S. E. 420.

Liquor discovered on person by illegal search, harmless error in admitting. *Stephens*, 16 A. 144, 84 S. E. 560.

Illegally sold by accused; relevancy of testimony on trial for homicide. *Lucas*, 146/315, 91 S. E. 72.

Proof of sale of, not rebutted by refusal to make other sale. Such refusal inadmissible. *Donaldson*, 3 A. 452, 60 S. E. 115.

Receipt of express package containing, relevant on trial for selling. *Bonner*, 2 A. 711, 58 S. E. 1123.

Relevancy of receipt of frequent shipments, large quantity in house, number of habits of the place, and their disorderly conduct, as tending to show violation of prohibition law. *Tooke*, 4 A. 497, 61 S. E. 917.

Sale made by one who delivers whisky and receives money, if no other seller shown. *Reese*, 120/198, 47 S. E. 560. See *Erwin*, 120/150, 47 S. E. 512.

Seized, for use as evidence of unlawful keeping, etc., seizure legal, and evidence admitted as to. *Jenkins*, 4 A. 864, 62 S. E. 574.

Sold, evidence of taste and effect considered. If it were brandy or whisky, proof of its intoxicating character not needed. *Edwards*, 124/100, 52 S. E. 319.

Keeping for sale, evidenced by sale. *Kinnebrew*, 15 A. 344, 83 S. E. 148; *Rice*, 15 A. 505, 83 S. E. 868. See *Liquors*.

Lis pendens, recovery of land on doctrine of. Admissibility of evidence. *Whalley*, 139/149, 76 S. E. 1025.

Locomotive engine, admissibility of testimony as to condition and operation of. *Ga. &c. Ry. Co.*, 133/136, 65 S. E. 381. That all locomotive engines, with straight stacks, like one in question, throw out spark, admissible testimony. *A. & B. Ry. Co.*, 134/673, 68 S. E. 592.

Logically relevant facts admissible. *Aug. So. Ry. Co.*, 3 A. 513, 518, 60 S. E. 213.

Loss, proof of, not necessary to effect discharge of surety, unless act of creditor injured him. *Cloud*, 3 A. 7, 59 S. E. 202.

Lumber, testimony admissible on issue of quality of. *Hutchinson Co.*, 127/328, 56 S. E. 491.

Machine, model of; when not admissible. *Mitchell*, 16 A. 686, 85 S. E. 978.

Operation of, soon after injury by, relevant in suit for damages from such injury. *Ga. Oil Co.*, 112/620, 37 S. E. 873.

Admissibility of testimony of condition of appliance, a few hours after

injury. **Holland**, 134/679, 68 S. E. 555, 19 Ann. Cas. 1032.

Satisfaction of purchaser of, with another of same character and construction, when admissible. **Mayes**, 110/546, 35 S. E. 714.

Majority of church society, will of, how ascertained. **Nelson**, 112/188, 37 S. E. 404.

Malice, admissibility of evidence negating. **Rogers**, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64, Ann. Cas. 1914A, 1017.

In homicide, size and physical condition of deceased relevant on question as to, when. **Wells**, 115/577, 42 S. E. 39.

Proof of, in suit for malicious use of process. **Stewart**, 11 A. 661, 75 S. E. 991.

Relevancy of age of person charged with. **Gillis**, 129/403, 406, 58 S. E. 1051.

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Silence of slayer as tending to show, on hearing his wife's exclamation. **Nunn**, 143/452, 85 S. E. 346.

Relevancy of statements in conversation of accused to show. **Worthan**, 141/307, 308, 80 S. E. 1001.

Malicious prosecution, admissibility of evidence on trial for. **Southern Ry. Co.**, 139/460, 361, 77 S. E. 637.

Manslaughter, issue as to, not involved by evidence relating to homicide. **Harris**, 142/627, 83 S. E. 514; **Hickman**, 142/631, 83 S. E. 508.

Market value, admissibility of evidence to show difference in, where easement destroyed. **Atkinson**, 140/52, 78 S. E. 465.

Ascertainment and test of, as to property abutting on improved street. **City of Atlanta**, 142/325, 82 S. E. 899.

At nearest market place, with expense of transportation, when may be proved. **Ford**, 133/238, 65 S. E. 444.

How ascertained. Cost of the property considered, but not of itself sufficient proof. **Watson**, 112/838, 38 S. E. 82.

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Increase, as affecting right to recover for damages to land, admissibility of evidence as to. **Farkas**, 103/154, 29 S. E. 700; **Mayor &c. of Brunswick**, 103/234, 29 S. E. 701; **Estes**, 103/780, 30 S. E. 246.

In town near that fixed for delivery may be shown, if it be proved to be the same in both. **Ford**, 133/239, 65 S. E. 444.

Of goods, competency of testimony of witness engaged in particular business. **L. & N. R. Co.**, 144/683, 87 S. E. 889.

Of land, admissibility of evidence to show, in condemnation proceeding. **Flemister**, 140/512, 79 S. E. 148.

Of land taken or damaged, elements considered in estimating. **Central Georgia Power Co.**, 141/173, 185, 186, 191, 80 S. E. 636, 642, 645; **Central Georgia Power Co.**, 141/643, 81 S. E. 882; **Potts**, 140/431, 79 S. E. 110; **Flemister**, 140/511, 513, 79 S. E. 148.

Price as evidence of. **Atlanta Baggage Co.**, 4 A. 407, 61 S. E. 844. Market price in a town near that fixed in contract, irrelevant in suit for price of goods. **Bacon Co.**, 122/369, 50 S. E. 139. Market prices in different places, testimony as to, when admissible. **Erk**, 137/608, 73 S. E. 1065.

Testimony relevant on diminution of. **Langley**, 118/591, 45 S. E. 486, 98 Am. St. R. 133.

What considered in estimating. **Atlanta Terra Cotta Co.**, 132/538, 64 S. E. 563; **Nelson**, 138/253, 75 S. E. 245. When necessary to prove. **Sizer**, 129/144, 151, 58 S. E. 1055.

Marriage, admissibility of evidence on issue of, or illicit cohabitation. **Drawdy**, 130/161, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Affidavit tending to disprove claim of, admissible on hearing for alimony.

Roberts, 114/590, 40 S. E. 702. Denial of, by woman on trial of her reputed husband. **Hoxie**, 114/19, 39 S. E. 944.

Provable by testimony. **Southern Ry. Co.**, 126/1, 54 S. E. 911.

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Reputation, without proof of cohabitation, not sufficient to establish marriage, in prosecution for adultery. **Zackery**, 6 A. 105, 64 S. E. 281.

Medical expenses, what proof necessary to authorize recovery for, as element of damages. **Southern Ry. Co.**, 128/816, 58 S. E. 470.

Mental capacity of testator, admissibility of testimony touching. **Oxford**, 136/589, 590, 71 S. E. 883.

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To contract, admissibility of will as evidence of. **Watkins**, 23 A. 183, 98 S. E. 94.

To contract, evidence admissible to illustrate. **Newman**, 134/137, 57 S. E. 662.

To execute deed; admissibility of testimony of non-expert witness. Evidence insufficient to show want of capacity. **Hixon**, 144/408, 87 S. E. 475.

Mental incapacity of plaintiff, irrelevant testimony as to, when not harmful. **Walters**, 137/475, 73 S. E. 653.

Of testator; matters relevant to inquiry: family relations, reasonableness of will, source of title. **Holland**, 148/277, 96 S. E. 419.

Testimony of, when irrelevant to issue. **Thomas**, 134/606, 68 S. E. 323. Evidence not sufficient to show, so as to avoid deed. **Johnson**, 134/696, 68 S. E. 480.

To contract (make deed), what testimony not admissible to throw light on. **Jeter**, 135/22, 68 S. E. 787.

To make deed, and undue influence of grantee; admissibility of testimony. **Stephenson**, 141/561, 8; S. E. 851.

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Mental pain, allegation as to, authorized proof of nervousness. **Ga. So. Ry. Co.**, 5 A. 744, 63 S. E. 525.

Mental state illustrated by conduct; grantor afterward executed a will devising the same property. **Hubbard**, 148/238, 96 S. E. 327.

Irrelevant testimony as to. **Ga. Ry. &c. Co.**, 133/622, 66 S. E. 944.

Of accused toward decedent, what admissible to show, on trial for homicide. **Strickland**, 137/115, 72 S. E. 922.

Testimony admissible to show. **Johnson**, 130/22, 60 S. E. 158; **Melms**, 136/802, 72 S. E. 246.

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Of witness, he may testify to. **Thompson**, 120/440, 47 S. E. 935; **Alexander**, 118/28, 44 S. E. 851. May be shown by proof of ability and opportunity to know. **Rivers**, 118/42, 44 S. E. 859. See **Miley**, 118/274, 45 S. E. 245.

Merger of contract into deed, when no cause for excluding evidence of the contract. **Power**, 141/429, 81 S. E. 225.

Misrepresentations of number of acres, not heard in defense to contract for purchase of land. **Maxwell**, 101/55, 28 S. E. 672.

Testimony that an article was bought under a misunderstanding as to value, caused by "misrepresentation," when excluded. **Hoyle**, 105/123, 31 S. E. 137.

Mistake in agreement as to striking pleas of set-off, etc., testimony to prove, when not admissible. **Whitley**, 120/1038, 48 S. E. 406.

In testimony, that witness says he made, not usually cause for new trial. **Heath**, 141/65, 80 S. E. 288.

Of witness, when no cause for new trial. **Johnson**, 121/670, 50 S. E. 488.

In description of land conveyed, admissibility of evidence on issue of. **Long**, 133/691, 66 S. E. 894.

In notes, proof to show absence of, admissible. **Jackson**, 133/749, 66 S. E. 918.

Mistrial on account of tender of illegal testimony, when not declared. **Herring**, 10 A. 89, 72 S. E. 600.

When not required where testimony elicited, heard by jury, excluded and withdrawn. **Withrow**, 136/337, 71 S. E. 139.

Model, admissibility of. **Mitchell**, 16 A. 686, 85 S. E. 978.

Morphine, that witness was a habitual user of, and was not truthful, etc., when not admissible, **Gordon**, 141/348, 80 S. E. 1007.

Motion to exclude, no reversal for overruling, where part of the testimony referred to was competent. **Goddard**, 144/18, 85 S. E. 1013; **Desverges**, 18 A. 248, 89 S. E. 221.

Necessary, to preserve previous objection, where testimony admitted conditionally. **Quinn**, 22 A. 632, 97 S. E. 84.

Necessity for, where objectionable testimony admitted on promise to "connect it," **Lindsay**, 138/819, 76 S. E. 369.

Too broad, in not separating admissible and inadmissible parts. **Walker**, 6 A. 519, 65 S. E. 301.

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Motive, and cause of quarrel, testimony tending to show, admissible. **Wall**, 126/86, 54 S. E. 815; **Hayes**, 126/95, 54 S. E. 809. Motive and connection of accused, admissibility of testimony tending to show. **Smith**, 148/467, 96 S. E. 1042.

Admissibility of evidence as to a line of conduct by accused, as tending to show. **Green**, 125/742, 54 S. E. 724.

Accused may prove ill-feeling of witness against him, but not details of difficulty between them, or the cause of the hostility. **McDuffie**, 121/584, 49 S. E. 708.

Admissibility of evidence as tending to show motive or explain conduct. **Harper**, 129/772, 59 S. E. 792.

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Admissibility of evidence as to declarations or line of conduct by accused tending to show. **Roberts**, 123/146, 51 S. E. 374; **Campbell**, 123/533, 51 S. E. 644.

Of prosecutor, error in not allowing accused to introduce testimony as to. **Billings**, 8 A. 672, 70 S. E. 36.

Of prosecutor, irrelevant testimony as to. **Sheffield**, 18 A. 697, 90 S. E. 356.

Admissibility of prosecutor's sayings, etc., as tending to show motive. **McCullough**, 11 A. 612, 76 S. E. 393.

Admissibility of testimony as tending to show, on trial for procuring abortion. **Sullivan**, 121/183, 48 S. E. 949; **Barrow**, 121/187, 48 S. E. 950.

Admissibility of testimony as to, by party where act is in question. **Roby**, 121/685, 686, 49 S. E. 694, 68 L. R. A. 601.

Admissibility of former quarrels. **Smallwood**, 9 A. 300, 70 S. E. 1124.

Cross-examination as to matter tending to show. **Glover**, 15 A. 45, 54, 82 S. E. 602.

For crime, and mental impression of accused, what admissible as tending to show. **Johnson**, 130/22, 60 S. E. 158; **Burley**, 130/343, 60 S. E. 1006.

For desiring crime committed, and attempt to induce another to commit it, proof of, admitted. **Howard**, 109/137, 34 S. E. 830.

For embezzlement, evidence tending to show. **Bridges**, 103/21, 29 S. E. 859. Pressing need of money after time of, incompetent to show. **Haupt**, 108/62, 33 S. E. 829.

For homicide, poverty of accused cannot be proved as; though it may be shown he was an heir of deceased and had spoken of money the deceased had in bank. **Johnson**, 128/71, 57 S. E. 84.

For killing, proof of subsequent facts admitted to illustrate. **Hoxie**, 114/19, 39 S. E. 944. Indicated by condition of the body. **Robinson**, 114/56, 39 S. E. 862. Motive or state of feeling of accused illustrated by statement he made recently before homicide. **Mc-**

Motive—(Continued).

Cray, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

For swearing falsely, shown; witness allowed to reply by showing consonant statements made before the motive existed. **Sweeney**, 121/293, 48 S. E. 984. Accused may prove ill feeling of witness against him, but not details of difficulty between them, or the cause of the hostility. **McDuffie**, 121/584, 49 S. E. 708.

Illustrated by conversation immediately after battery. **Moody**, 120/868, 48 S. E. 340.

Of accused in case of homicide, admissibility of testimony throwing light on. **Frank**, 141/244, 80 S. E. 1016; **Coleman**, 141/736, 82 S. E. 228.

Of accused, matters illustrating. Arresting officer exhibited to him warrant and writ. **Lindsey**, 145/9, 88 S. E. 202. Pending indictment. *Ib.* 11. Previous display of anger. **Boone**, 145/37, 38, 88 S. E. 558.

Of accused, where his act involved wife's life, addresses by him to other female as bearing on. **Shaw**, 102/661, 29 S. E. 477.

Of deceased, his declaration going to place of homicide not received to show. **McCray**, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Of officer making arrest, immaterial, where, independently of the motive, the arrest was legal. **McDuffie**, 121/580, 49 S. E. 708.

Of aldermen in voting for ordinance was irrelevant to issue of its legal validity. **Melnick**, 147/526, 94 S. E. 1015.

Of one accused of converting to his own use proceeds of property entrusted to him, his being in debt and in need of money relevant to show. **Govatos**, 116/592, 42 S. E. 708.

Of party to affray, how proved. **Robinson**, 118/198, 44 S. E. 985. Of suborner of perjury, his sayings and acts relevant on. **Stone**, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Of witness, admissibility of testimony intended to show. **Billings**, 8 A. 672, 70 S. E. 36.

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Of witness, he may state what was. But his actions may show otherwise. **Alexander**, 118/28, 44 S. E. 851.

For selecting jurisdiction, an irrelevant issue. **Mason**, 135/741, 70 S. E. 225, 33 L. R. A. (N. S.) 280.

State of mind of slayer, admissibility of testimony showing. **Helms**, 138/826, 828, 76 S. E. 353.

What admissible on question of. **Rawlins**, 124/32, 52 S. E. 1.

Municipal court, greater latitude as to admission of testimony in, than in State courts. **Venable**, 7 A. 192, 66 S. E. 489.

Municipal non-control of structure in highway, admissibility of testimony as to. **Georgia Ry. & Co.**, 138/597, 75 S. E. 664.

Murder of wife, course of ill treatment admissible on trial for. **Lindsey**, 145/11, 88 S. E. 202.

Of wife, evidence of her pregnancy competent on trial of husband for. **Withrow**, 136/337, 338, 71 S. E. 139.

Testimony as to weapon and wound, without specific descriptive allegations. **Bowens**, 106/760, 32 S. E. 666.

Name, identity of, as indicating identity of person. **Smith**, 11 A. 89, 74 S. E. 711; **Gray Co.**, 127/696, 56 S. E. 252.

Identity of, as indicating identity of person, where the same name appears in different parts of a record. **Crawford**, 4 A. 508, 61 S. E. 886; **Swift**, 8 A. 545, 70 S. E. 97.

Identity of, when not imply identity of person. **Shuler**, 125/781, 54 S. E. 689.

"Jr." omitted from, no reason for excluding testimony. **Taylor**, 138/826, 76 S. E. 347.

Narrative without questions, not an objectionable form of testifying. **Horton**, 123/145, 51 S. E. 287.

Necessity, issue whether tramroad was a way of; refusal of injunction on conflicting evidence. **Hutchinson**, 144/565, 87 S. E. 777.

To work in order to support family, held admissible testimony in suit for personal injuries. **Macon Consol. R. Co.**, 113/214, 38 S. E. 756.

Negative testimony, proper charge on. *Saunders*, 15 A. 344, 83 S. E. 148.

As to character, when admissible. *Powell*, 101/17, 29 S. E. 309, 65 Am. St. R. 277.

Without probative value. *Arnold*, 10 A. 12, 72 S. E. 510. Negative ("don't think," etc.), sufficient to make issue for jury, as against positive testimony. *Pendergrast*, 6 A. 47, 64 S. E. 282.

Evidence that defendant sold non-intoxicating liquid to many does not disprove sale of intoxicant to person testifying to intoxicating effect. *Hall*, 7 A. 186, 66 S. E. 486.

Tending to prove good character. *Powell*, 101/10, 29 S. E. 309.

Error in charging jury as to. *Peak*, 5 A. 56, 62 S. E. 665; *Harper*, 14 A. 603, 81 S. E. 817.

Insufficient exception to charge of court on. *Sullivan*, 14 A. 762, 82 S. E. 314.

Proper charge as to effect of. *Wood*, 9 A. 365, 71 S. E. 500. Negative and positive distinguished. *Heywood*, 12 A. 643, 77 S. E. 1130. Negative and positive, failure to charge as to, no error, in absence of request. *Scott*, 117/14, 43 S. E. 425. Proper charge to jury on. *Southern Ry. Co.*, 119/148, 45 S. E. 1000. Rule as to. *Hollis*, 103/76, 29 S. E. 482. Qualification of rule as to. *Atlanta Con. St. R. Co.*, 105/498, 30 S. E. 934; *Southern Ry. Co.*, 115/659, 42 S. E. 42.

Negligence and diligence, testimony as to, and legitimate inferences from. *Pullman's Co.*, 106/765, 32 S. E. 923. Absence of barrier and of warning provable in explanation. *Columbus R. Co.*, 133/573, 66 S. E. 902. State of mind of motorman was not relevant on issue of. *Ga. Ry. & Co.*, 133/622, 66 S. E. 944.

Admissibility of evidence on issues of. *Southern Ry. Co.*, 132/858, 64 S. E. 1083.

At earlier time, relevancy of. *W. & A. R. Co.*, 225, 97 S. E. 878.

Before and after act complained of as negligent, admissibility of testimony

as to. *Central R. Co.*, 113/176, 38 S. E. 394.

Condition after injury, when not relevant on issue as to. *Stamps*, 8 A. 231, 233, 68 S. E. 947.

Conduct and precautions taken after injury happened, when not admissible to show. *Central Ry. Co.*, 138/107, 74 S. E. 839; *Central Ry. Co.*, 121/656, 49 S. E. 683; *L. & N. R. Co.*, 131/792, 63 S. E. 501; *Ga. So. R. Co.*, 116/164, 42 S. E. 405, 59 L. R. A. 118.

Inadmissibility of testimony of conduct on previous occasions. *Ga. So. Ry. Co.*, 144/481, 87 S. E. 388. See *L. & N. R. Co.*, 144/392, 87 S. E. 395.

Defect observed a year before, how illustrative. *Southern Ry. Co.*, 139/550, 555, 77 S. E. 803.

Testimony admissible on issue as to improper or unsafe freight-car. *Ga. So. Ry. Co.*, 1 A. 204, 58 S. E. 236.

Incompetent to testify that deceased appeared to be a careless man. *Daughtry*, 1 A. 393, 58 S. E. 230.

Later conduct of defendant, when not admissible. *Harrell*, 137/550, 73 S. E. 735.

In maintaining unsafe landing place, and plaintiff's ignorance of it, admissibility of testimony to show. *Central Ry. Co.*, 138/107, 74 S. E. 839.

In operating locomotive, on issue of evidence of its equipment, condition, headlight, etc., admissible. *Central Ry. Co.*, 114/548, 40 S. E. 738.

In violating rule of railroad as to shifting cars; admissibility of testimony. *Charleston & Co. Ry. Co.*, 140/155, 78 S. E. 763.

Isolated act of, not to be proved. *City of Dalton*, 139/556, 77 S. E. 790. See *Southern Ry. Co.*, 139/555, 77 S. E. 803.

Not necessary to prove each of several alleged acts of, if proof of one establishes liability. *Cavanaugh*, 9 A. 466, 71 S. E. 779.

Of master, as to want of covering for revolving saw; admissibility of testimony. *Betts Co.*, 139/198, 77 S. E. 77.

Negligence—(Continued).

Of master or servant, relevant testimony on questions of. **Portner Brewing Co.**, 120/20, 47 S. E. 631.

On issue of, that mules escaped by no fault of plaintiff, admissible. **Louisville R. Co.**, 106/786, 32 S. E. 860.

On the issue whether ordinary care was exercised by one who fell into a hole, testimony of another, that shortly before the fall he was at the same place and did not see the hole, was irrelevant. **Central Ry. Co.**, 121/657, 49 S. E. 683.

Other than that alleged, irrelevant. **Central Ry. Co.**, 117/832, 45 S. E. 223. See **Ga. Brewing Co.**, 117/480, 43 S. E. 698. When may be proved. **Palmer Brick Co.**, 119/837, 845, 47 S. E. 329. Admissibility of evidence as to. **Nettow Mfg. Co.**, 7 A. 164, 66 S. E. 399. Negligence not shown by repairs made after injury. **Great Cosmopolitan Shows**, 7 A. 326, 66 S. E. 624.

Per se, violation of statute or ordinance is evidence; but not of wantonness, wilfulness, etc. **Southern Ry. Co.**, 132/817, 65 S. E. 131.

Proof of, confined to acts pleaded. **Hudgins**, 122/695, 50 S. E. 974. Allegation of, essential, to admit testimony that engineer knew character of place. **L. & N. R. Co.**, 135/67, 68 S. E. 805.

Testimony of distinct and independent acts of, not alleged, not admissible as basis of recovery; aliter in rebuttal of other testimony. **Macon R. Co.**, 133/83, 65 S. E. 146. See **Ga. & C. Ry. Co.**, 133/137, 65 S. E. 381.

Newly discovered evidence as ground for revoking alimony order, for second injunction application, etc. **Jennison**, 136/210, 71 S. E. 244, Ann. Cas. 1912-C, 441.

Motion for new trial should have been continued to afford opportunity to obtain. **Thompson**, 138/267, 75 S. E. 357.

Negating injury, after verdict of damages, when did not require new

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trial. **Macon R. Co.**, 133/83, 65 S. E. 146.

Of juror's relationship to prosecutor, ground for new trial. **Smith**, 2 A. 574, 59 S. E. 311.

Witness being known and present at the trial, and not introduced, his subsequent affidavit not available to set aside verdict. **Harper**, 131/772, 63 S. E. 339.

When no ground for setting aside judgment. **Thomason**, 129/440, 448, 59 S. E. 236.

Not merely cumulative, and productive of different result, ground for new trial. **Fellows**, 114/233, 39 S. E. 885.

Not productive of different result; sufficient diligence not shown, etc. **Georgia Life Insurance Co.**, 143/787, 85 S. E. 1036.

No ground for new trial, on certiorari. **Laffitte**, 105/596, 31 S. E. 540.

May be met by impeaching affidavits. **Thompson**, 139/592, 77 S. E. 811.

What defendant would have sworn if she had been present at the trial is not on footing of. **Newman**, 108/339, 33 S. E. 997.

Affidavit of accused, at variance with his statement on trial, not treated as. **Brooks**, 108/47, 33 S. E. 812.

Affidavits showing, not entitled, and not considered, no reversal. **Long**, 127/350, 56 S. E. 444.

Affidavits of character and credibility of witnesses required. **Miller**, 118/12, 43 S. E. 851.

As ground for new trial. **Eates**, 105/495, 30 S. E. 882; **Laffitte**, 105/596, 31 S. E. 540; **Hicks**, 105/627, 31 S. E. 579; **Brown**, 105/640, 31 S. E. 557; **Battle**, 105/703, 32 S. E. 160; **Lewis**, 106/362, 32 S. E. 342; **Dill**, 106/683, 32 S. E. 660; **Carr**, 106/737, 32 S. E. 844; **Womble**, 107/667, 33 S. E. 630; **Hardin**, 107/719, 33 S. E. 700; **Ponder**, 107/753, 33 S. E. 690; **Cook**, 108/770, 33 S. E. 632; **Mayor**, 108/779, 33 S. E. 657; **Ausbury**, 108/787, 33 S. E. 811, 881; **Carroll**, 108/788, 33 S. E. 841;

Newly discovered—(Continued).

Atlanta Co., 108/799, 33 S. E. 995; Ga. So. R. Co., 108/800, 34 S. E. 127; Dawkins, 108/804, 34 S. E. 165; Southern Ry. Co., 108/808, 34 S. E. 147; Isham, 112/406, 37 S. E. 735; Grace, 112/425, 37 S. E. 737; Webb, 112/432, 37 S. E. 710; Malone, 116/272, 42 S. E. 468; Somers, 116/535, 42 S. E. 779; Hatcher, 116/617, 42 S. E. 1018; Atwater, 116/745, 42 S. E. 1007; Hodge, 116/852, 43 S. E. 255; Ga. R. Co., 127/408, 56 S. E. 409; Chambless, 127/414, 56 S. E. 414. Not favored. What must appear therein. Burge, 133/431, 66 S. E. 243; Pharr, 133/759, 66 S. E. 917; Brown, 141/783, 82 S. E. 238; Solomon, 2 A. 92, 58 S. E. 381; Carter, 2 A. 267, 58 S. E. 532; McDuffie, 2 A. 401, 58 S. E. 544.

When no ground for new trial. Parker, 3 A. 337, 59 S. E. 823; Fort, 3 A. 448, 60 S. E. 282; Bunn, 3 A. 518, 60 S. E. 223; Hall, 141/7, 80 S. E. 307; McLaughlin, 141/132, 80 S. E. 631; Worthan, 141/307, 308, 80 S. E. 1001; Mays, 141/523, 81 S. E. 440; Wheeler, 141/559, 81 S. E. 866; Hart, 141/672, 81 S. E. 1108; Coleman, 141/737, 82 S. E. 227; Speer, 136/67, 70 S. E. 797; Shackelford, 135/29, 31, 68 S. E. 783, 838; Bowers, 135/310, 69 S. E. 536; Reeves, 135/311, 69 S. E. 536; Widincamp, 135/323, 69 S. E. 535; Moreland, 134/268, 67 S. E. 804; City of Rome, 134/650, 68 S. E. 330; Wilson, 134/782, 68 S. E. 497; Warthen, 132/113, 63 S. E. 832, 131 Am. St. R. 184; Leathers, 132/211, 63 S. E. 1118; Taylor, 132/235, 63 S. E. 1116; Shelton, 132/413, 64 S. E. 262; Bradford, 132/642, 64 S. E. 688; Harper, 131/772, 63 S. E. 339; Drane, 130/349, 60 S. E. 863; Chandler, 131/82, 61 S. E. 1036; Atlanta Ry. Co., 131/395, 62 S. E. 281; Young, 131/498, 62 S. E. 707; Dillard, 131/500, 62 S. E. 705; Dodge, 131/549, 62 S. E. 987; Betts Co., 139/198, 77 S. E. 77; Thompson, 139/592, 77 S. E. 811; Miller, 139/716, 78 S. E. 181; Mitch-

Newly discovered—(Continued).

ell, 138/21, 74 S. E. 690; McNaughton, 138/412, 75 S. E. 251; Phillips, 138/815, 76 S. E. 352; Williams, 138/825, 76 S. E. 347; Jones, 137/21, 72 S. E. 410; Cadwalader, 137/140, 72 S. E. 903; Taylor, 137/163, 73 S. E. 363; Jefferson, 137/383, 73 S. E. 499; Walker, 137/399, 73 S. E. 368; Montgomery, 137/364, 73 S. E. 1053; Killebrue, 137/681, 74 S. E. 270; Crawley, 137/778, 74 S. E. 532; Jones, 135/358, 69 S. E. 527; Taylor, 135/622, 70 S. E. 237; Wimms, 135/659, 70 S. E. 254; Goodman, 122/111, 49 S. E. 922; Scott, 122/138, 50 S. E. 49; Anderson, 122/161, 50 S. E. 46; Lawless, 121/276, 50 S. E. 85; Powell, 121/571, 50 S. E. 369; Harris, 114/35, 39 S. E. 928; Davis, 114/104, 39 S. E. 906; Moore, 114/256, 40 S. E. 295; Dennard, 142/171, 82 S. E. 558. On extraordinary motion. Frank, 142/617, 83 S. E. 233.

No ground for new trial, where merely cumulative. McKinnon, 145/374, 89 S. E. 415; Milam, 108/30, 33 S. E. 818.

If merely cumulative and impeaching. Raines, 148/176, 96 S. E. 179; Pool, 148/180, 96 S. E. 179; Varndoe, 148/229, 96 S. E. 326; Ginn, 148/252, 96 S. E. 322; Brown, 127/285, 56 S. E. 417; Broadhurst, 140/211, 212, 78 S. E. 838; Roy, 140/223, 224, 78 S. E. 846; Srochi, 140/345, 78 S. E. 1003. Cumulative, impeaching, and not productive of different result, no cause for new trial. Patterson, 146/623, 92 S. E. 44. Cumulative, and diligence lacking. City of Macon, 108/323, 34 S. E. 152. Cumulative, and proper diligence not exercised. Recollection of witnesses refreshed, for discretion of the judge. Greer, 120/291, 47 S. E. 939. Impeaching. S. F. & W. R. Co., 104/655, 30 S. E. 378. Merely impeaching, and no proper diligence. Monts, 120/144, 47 S. E. 574; Hicks, 146/222, 91 S. E. 57. Rebutted by counter-showing. Morgan, 120/503, 48 S. E. 238; Jordan, 120/864, 865, 48 S. E. 352. Impeaching and

Newly Discovered—(Continued).

negative. **Conant**, 120/568, 48 S. E. 234. Disqualification of grand jurors. **Davis**, 120/845, 48 S. E. 305. Facts known to accused; showing insufficient. **Gaines**, 120/137, 47 S. E. 571. Expert testimony of genuineness of signature to note sued on. **Pullin**, 143/184, 84 S. E. 443. Not productive of different result; sufficient diligence not shown, etc. **Frasier**, 143/322, 85 S. E. 124; **Knight**, 143/679, 85 S. E. 915. Discretion of judge as to. **Nix**, 120/166, 47 S. E. 516. Cumulative, and unlikely to affect result. **Bickers**, 120/172, 47 S. E. 515. Affidavits not showing previous ignorance and exercise of diligence. **Smiley**, 144/546, 87 S. E. 668; **Smith**, 144/691, 87 S. E. 888; **Biggers**, 144/857, 88 S. E. 190. If diligence be not sufficiently shown. **Jones**, 148/284, 96 S. E. 386; **Smith**, 2 A. 581, 59 S. E. 311. If not productive of different result. **Stogner**, 148/285, 96 S. E. 498; **Shiver**, 148/616, 97 S. E. 676. If required showing be incomplete. **Inter-Southern Life Ins. Co.**, 148/233, 96 S. E. 424. Where contradicted. **Huff**, 104/521, 30 S. E. 808. Where movant knew of, but declined to introduce certain witnesses. **O'Neil**, 104/538, 30 S. E. 843.

New promise, law as to entry of credit constituting, is a rule of evidence, and not statute of limitations. **Moore**, 103/523, 30 S. E. 535.

Non est factum, plea of, may be established by circumstantial as well as direct testimony. **Dillard**, 140/17, 78 S. E. 414.

Proper charge to jury as to proof of. **Citizens Bank**, 10 A. 703, 74 S. E. 303. See **Moore**, 13 A. 120, 78 S. E. 829.

Non-existence at a certain time, a circumstance tending to show non-existence shortly before that time (as an alleged corporation). **Mitchell**, 17 A. 325, 86 S. E. 737.

Non-production of witness (physician), what testimony received to explain. **Morgan County**, 139/415, 416, 77 S. E. 583.

Notice or knowledge, proof of, from circumstances. **McGregor**, 128/585, 58 S. E. 28, 13 L. R. A. (N. S.) 185. See **Board of Education**, 128/167, 57 S. E. 359. Notice or warning to others, not shown to have been communicated to plaintiff, not admissible. **Atlanta Ry. Co.**, 118/449, 45 S. E. 494.

Agent's want of, does not show principal's want of. **Eason**, 108/109, 33 S. E. 873.

By publication, general reputation, and other means, how shown. **Bush**, 127/308, 56 S. E. 430, 9 Ann. Cas. 240.

By *lis pendens*; suit for specific performance, in county other than where land lies. **Marshall**, 136/805, 72 S. E. 244, 36 L. R. A. (N. S.) 552.

By record of deed, of easements and rights conveyed. Testimony of no actual notice incompetent. **Horne**, 142/489, 83 S. E. 204, Ann. Cas. 1916B, 1212.

Charged to principal by knowledge of agent before he became such. **German Am. L. A.**, 102/720, 29 S. E. 615.

Evidence of, in cases of partnership, principal and agent, etc. **Bush**, 3 A. 49, 59 S. E. 459; **Taylor**, 3 A. 106, 59 S. E. 328; **Fitzgerald**, 3 A. 212, 59 S. E. 713; **Collins**, 3 A. 238, 59 S. E. 727; **Mims**, 3 A. 247, 59 S. E. 711.

Inference of, from custom or habit. **Vaughan**, 22 A. 401, 96 S. E. 13.

Not required by contract of guaranty of stock dividends, testimony as to want of, irrelevant. **Rogers**, 112/253, 37 S. E. 429.

Of consideration of note, not notice of failure thereof. **McManus**, 143/623, 85 S. E. 858.

Of equitable right or interest in land, circumstances tending to prove. **Hall**, 134/77, 67 S. E. 428.

Of homestead application, not received by creditor, competent. **Weekes**, 101/314, 28 S. E. 853.

Of introduction of bill in General Assembly, admissibility of evidence as to. **Cutcher**, 105/180, 31 S. E. 139.

Of local or special legislation, evidence of, determined by General As-

sembly before passing. **Burge**, 134/307, 67 S. E. 857; **White**, 134/532, 68 S. E. 103; **DeLoach**, 134/756, 68 S. E. 708, 20 Ann. Cas. 342; **Clark**, 134/789, 68 S. E. 598.

Evidence to show absence of, properly excluded. **Harper**, 136/141, 70 S. E. 1102.

Of nuisance, and request to abate; no error in admitting evidence as to. **City of Rome**, 12 A. 756, 78 S. E. 475.

Of opposing claim of title, how considered; and when not conclusive against bona fides of possession. **Moate**, 146/425, 91 S. E. 420.

Of processioning; sufficiency of record, and of oral notice of postponement. **Garrett**, 134/442, 67 S. E. 1036.

Of wife's ownership of money, husband's statements to his creditor admissible on question of. **Paul**, 118/358 45 S. E. 387.

Proof of sending. **Dunn**, 18 A. 383, 89 S. E. 432.

Shown by proof of mailing registered letter, with copy and registry receipt. **Lewis**, 18 A. 181, 89 S. E. 177.

That debt paid with wife's money was that of husband, competent. **Gilmore**, 137/275, 73 S. E. 364.

To city, of defects in street, by notice to police officer. And to "authorities at the court-house." **City of Columbus**, 102/294, 29 S. E. 749.

To claimant, inadmissibility of evidence offered to charge. **Stewart**, 135/112, 68 S. E. 1037.

To principal with many agents, negatived by the one to whom it was alleged the notice was given; not necessary to produce all. **Trav. Ins. Co.**, 119/455, 46 S. E. 678.

To superintendent, of servant's youth, arising from how he was dressed. **Girvin**, 143/762, 763, 85 S. E. 922.

Want of, admissibility of testimony as to. **Durrence**, 117/389, 43 S. E. 726.

Nuisance by discharge of sewage, competent testimony on issue as to; and

what evidence irrelevant. **Manning**, 136/881, 72 S. E. 401.

Evidence that plaintiff moved from home near, not irrelevant. **Southern Ry. Co.**, 130/222, 60 S. E. 539.

Public, competency of evidence on proceeding for abatement of. **Brindle**, 145/398, 89 S. E. 332.

Nuncupative will, nature and amount of proof, to uphold. **Scales**, 118/96, 44 S. E. 857.

Not to be probated where witnesses differ materially as to spoken words of testator. **Harp**, 142/6, 82 S. E. 246; **Reid**, 142/359, 82 S. E. 1054.

Objection as presented not sustainable, testimony not excluded on other ground. **Bexley**, 141/2, 80 S. E. 314; **Frank**, 141/255, 80 S. E. 1016.

As stated, held not to have presented the ground thereof. **Richardson**, 146/15, 90 S. E. 379.

Burden on party offering, to state specific reason. Failure to make, treated as waiver. **Andrews**, 118/1, 43 S. E. 852.

Failure to rule on, and evidence received, equivalent to overruling. **Lynn**, 140/387, 79 S. E. 29.

First offered after verdict, too late. **Alford**, 137/459, 73 S. E. 375. Too late after verdict (that evidence did not correspond with pleading). **Macon Ry. Co.**, 4 A. 317, 61 S. E. 290. (That evidence was obtained by unlawful search). **Davis**, 4 A. 318, 61 S. E. 404.

Good when raised, no new trial for overruling, where deficiencies supplied later. **Metropolitan Ins. Co.**, 134/165, 67 S. E. 393.

Not good, though good objection might have been made, new trial not granted because admitted. **Southern Pine Co.**, 113/633, 38 S. E. 960.

Not repeated after ruling by judge that he would "leave the testimony in for the present," limiting it to a special purpose; no ground for exception. **Bowers**, 10 A. 368, 374, 73 S. E. 677; **Duckett**, 23 A. 631, 99 S. E. 151.

Objection—(Continued).

Not repeated after testimony objected to had been admitted on promise to connect it with other evidence; no basis for exception, though the promise was not fulfilled. *Thurman*, 14 A. 543, 81 S. E. 796.

Not waived by counsel who did not hear judge's question whether certain articles should go to jury. *Smith*, 14 A. 610, 81 S. E. 817.

Other than presented when evidence offered not passed on by reviewing court. *Turner*, 141/29, 80 S. E. 461; *Chambers*, 141/652, 81 S. E. 880.

Practice of making, captiously and frequently, to be discouraged. *Mimbs*, 2 A. 388, 58 S. E. 499.

Predicated on facts not disclosed by, at the time, properly overruled. *McConnell*, 134/95, 67 S. E. 440.

Evidence received without, when open to attack after verdict. *Brookman*, 148/726, 98 S. E. 543; cf. *Groover*, 148/794, 98 S. E. 503.

Removed by statement (not objected to) by counsel in his place. *Ellis*, 134/287, 67 S. E. 819.

Rule as to waiver of, by failure to object at trial; not applied to mere hearsay, which was without probative value though admitted. *Rabun*, 21 A. 43, 93 S. E. 524.

Statement as to admission in presenting, when not taken as true. *Alaculsey Lumber Co.*, 146/310, 91 S. E. 104.

That testimony was not pertinent to pleading was waived by failure to object to its introduction. *Savannah Chemical Co.*, 14 A. 371, 377, 80 S. E. 858.

To competency of witness, when may be taken. *Hall*, 139/13, 76 S. E. 566.

Effect of not presenting, when testimony of other witness is afterward offered. *Nash*, 147/209, 93 S. E. 203.

Not definite and specific, overruling of, no error for reversal. *Freeman*, 147/700, 95 S. E. 236.

Noted in brief of evidence, not in motion for new trial, no basis for exception. *Sims*, 147/200, 93 S. E. 200.

Objection—(Continued).

Objections and rulings as to, not to be set out in brief of evidence. *Will*, 15 A. 352, 83 S. E. 275.

Interrupted by court saying objecting counsel could show on cross-examination that the testimony was improper; effect of failure to make subsequent motion to exclude. *Williams*, 123/138, 51 S. E. 322. See *Whipple*, 123/581, 51 S. E. 590.

Made jointly by several parties, not good where the evidence is admissible as to any of them. *Clarke*, 113/22, 38 S. E. 323.

Must specify distinctly what is inadmissible, and set it out in statement of exception to ruling. *Jackson*, 132/56, 63 S. E. 823; *Hawkins*, 132/266, 63 S. E. 852, 131 Am. St. R. 190.

Nullified by not objecting to other evidence to the same effect. *Terry*, 15 A. 108, 82 S. E. 635; *Griffin*, 15 A. 552, 83 S. E. 871.

Too general. *Atlantic Compress Co.*, 15 A. 747, 84 S. E. 155; *Walker*, 105/253, 31 S. E. 165.

To evidence does not raise question of legal sufficiency of petition. *Fleming*, 114/634, 40 S. E. 792.

Precluded by failure to demur to allegations of petition. *Lyle*, 20 A. 380, 93 S. E. 20.

When concluded by ruling, on demurrer, that contract was not within statute of frauds. *Hawkins*, 132/265, 63 S. E. 852, 131 Am. St. R. 190.

To sending to the jury-room an object referred to in testimony, waiver of, by conduct. *Barrow*, 15 A. 692, 84 S. E. 204.

Should state of what better evidence consists. *Levens*, 102/480, 31 S. E. 104.

Waiver by not objecting at proper time. *Martin*, 15 A. 496, 83 S. E. 872; *Rice*, 15 A. 505, 83 S. E. 868. By delay until after conclusion of testimony. *Southern Ry. Co.*, 123/614, 51 S. E. 594.

What must appear, to be considered. *Moree*, 110/256, 34 S. E. 327; *Armour*, 110/403, 35 S. E. 787; *Bour-*

Objection—(Continued).

quin, 110/440, 35 S. E. 710; Lucas, 110/756, 36 S. E. 87.

When waived by examination of witness as to same matter, and when not. Howard, 18 A. 6, 89 S. E. 443.

Waived by not joining in objection made by opposing counsel, or otherwise objecting at the trial. Wright, 6 A. 770, 65 S. E. 806.

Waived by not making it at trial (that the evidence was obtained by unlawful arrest). Williams, 7 A. 33, 65 S. E. 1097; Butler, 14 A. 446, 81 S. E. 370.

Where court admitted evidence, saying he would pass on the objection later, waived by not afterwards moving to exclude it. Cawthon, 119/396, 46 S. E. 897.

Not renewed, held waived, as to testimony admitted conditionally. Quinn, 22 A. 632, 97 S. E. 84.

Waived, if not renewed after failure to rule on it. Page, 23 A. 548, 99 S. E. 55.

Ruling on, postponed; motion to rule out should be made afterward. American Chemical Co., 139/497, 77 S. E. 582.

Not well taken to whole of, where some admissible. Ray, 110/818, 36 S. E. 242; Minter, 104/744, 30 S. E. 989; L. & N. R. Co., 144/683, 87 S. E. 889; Bass Co., 116/176, 42 S. E. 415; Gully, 116/527, 42 S. E. 790; Kelly, 116/881, 43 S. E. 280; Macon & Co., 140/536, 79 S. E. 153; Robertson, 132/310, 64 S. E. 73; Maynard, 112/443, 37 S. E. 741; Collins Park Co., 112/663, 37 S. E. 975; Sims, 131/263, 62 S. E. 192; Dolvin, 131/300, 62 S. E. 198; Arnold, 131/494, 62 S. E. 806; Battle, 146/246, 91 S. E. 32; Brown, 146/513, 91 S. E. 771; Farmers & Co. Bank, 19 A. 591, 91 S. E. 999; City of Atlanta, 19 A. 694, 92 S. E. 28; Brown, 147/498, 94 S. E. 759; Freeman, 147/700, 95 S. E. 236; Stoker, 23 A. 12, 97 S. E. 273; Armour Fertilizer Works, 23 A. 189, 98 S. E. 105; Eckman, 23 A. 392, 98 S. E. 187; Sykes, 23 A. 547, 99 S.

Objection—(Continued).

E. 55; Hixon, 120/385, 47 S. E. 901; Shedden, 121/639, 49 S. E. 719; Waters, 133/641, 642, 66 S. E. 884; Knight, 148/40, 95 S. E. 679; Brookman, 148/123, 98 S. E. 543; Southern Ry. Co., 115/602, 41 S. E. 1013; Southern Accident Co., 13 A. 292, 79 220; Branch, 139/375, 77 S. E. 386; American Ins. Co., 6 A. 425, 65 S. E. 160; Walker, 6 A. 519, 65 S. E. 301; Thompson, 6 A. 604, 65 S. E. 599; Central Ry. Co., 8 A. 2, 68 S. E. 775; Brown, 8 A. 382, 69 S. E. 45; Great Southern Accident Co., 13 A. 292, 79 S. E. 162; Thacher, 21 A. 569, 94 S. E. 838; Central of Ga. Ry. Co., 22 A. 35, 95 S. E. 323; Brinson, 22 A. 650, 97 S. E. 102; Desverges, 18 A. 249, 89 S. E. 221; Leath, 117/589, 43 S. E. 985; Sweeney, 119/76, 46 S. E. 76, 100 Am. St. R. 159; Barnard, 119/436, 46 S. E. 644; McCrary, 119/876, 47 S. E. 341; Brunswick R. Co., 129/175, 58 S. E. 705; Ga. R. Co., 129/502, 59 S. E. 217; Ray, 4 A. 71, 60 S. E. 816; Selman, 20 A. 440, 93 S. E. 60; Consolidated Phosphate Co., 20 A. 474, 93 S. E. 155; Campbell, 124/432, 52 S. E. 914; Park, 126/575, 55 S. E. 489; Martin, 126/577, 55 S. E. 499; Fambrough, 141/794, 82 S. E. 249; Johnson, 125/243, 54 S. E. 184; Harrison, 125/267, 53 S. E. 958. Effect of failure to repeat objection when the evidence objected to is substantially repeated. *Ib.*

To whole affidavit, where part competent, overruling of, no cause for reversal. Walker, 105/253, 31 S. E. 165.

When offered in mass, must point out incompetent parts. Knight, 143/678, 85 S. E. 915. Objections to long extracts from, parts being admissible, must segregate objectionable parts. Jones, 135/358, 69 S. E. 527; Strickland, 135/513, 69 S. E. 871.

Must be raised when offered. Gaines, 120/137, 47 S. E. 571. Not considered, where not raised when testimony offered. Clydesdale Bank, 18 A. 515, 89 S. E. 1051.

Objection—(Continued).

Must be presented when testimony is offered; not first in motion for new trial. *Williams*, 147/53, 92 S. E. 864.

Presented and ruled on when the evidence was offered, must appear. *Cook*, 134/347, 67 S. E. 812; *Wadsworth*, 134/816, 68 S. E. 649; *Daniel*, 106/91, 31 S. E. 734.

Not specified, not ruled on. *Morris*, 104/705, 30 S. E. 937.

Not made at trial, not ground for new trial. *Knight*, 21 A. 46, 93 S. E. 535.

Error in admission of, no cause for new trial, when no specific objection appears to have been made when evidence offered. *Southern Ry. Co.*, 130/222, 60 S. E. 539; *Smith*, 130/351, 60 S. E. 1000.

Made at trial, not stated in excepting to ruling thereon, exception not considered. *Chattahoochee Valley Ry. Co.*, 9 A. 84, 70 S. E. 683.

To evidence as irrelevant and inadmissible, should be made when evidence first offered. *Cooley*, 3 A. 496, 60 S. E. 220.

To refusal to allow question; ground of motion for new trial should show that the judge was informed as to the expected answer. *Ellison*, 21 A. 259, 94 S. E. 253; *Artesian Co.*, 138/618, 75 S. E. 646.

Too late when urged first in brief of counsel in reviewing court. *Dale*, 140/790, 79 S. E. 1127; *Philpot*, 141/475, 81 S. E. 195.

General and indefinite, not sustained, that deed was "inadmissible." *Washington Exchange Bank*, 23 A. 356, 98 S. E. 418.

To evidence as "inadmissible," not sufficient. *McDonald*, 21 A. 126, 94 S. E. 262. As incompetent, raises no question for review. *Bowen*, 146/157, 91 S. E. 32; *Holloway*, 140/381, 78 S. E. 928; *Dale*, 140/790, 79 S. E. 1127. As incompetent and inadmissible. *Gordon*, 141/347, 80 S. E. 1107; *Richardson*, 141/782, 82 S. E. 134. As incompetent, immaterial, and irrelevant, amounts to objection for irrelevancy.

Objection—(Continued).

Kirkland, 145/94, 88 S. E. 680. Objection for irrelevancy is not raised by statement that testimony has nothing "to do with the case." *Hicks*, 146/221, 91 S. E. 57.

Rule of court that all objections must be urged at once. Discretion to relax it. Right of party to move to rule out evidence. *Patton*, 124/965, 53 S. E. 664; 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

Occupancy and presence of deceased, character and reason for, when relevant on trial of one for his homicide. *Hall*, 141/7, 80 S. E. 307.

Occupation and usual income from, when relevant, on question of earning capacity. *Wrightsville R. Co.*, 129/204, 58 S. E. 769.

Occurrence that witness did not see (shooting), admissibility of testimony as to. *Crumbly*, 141/17, 80 S. E. 281.

Offer for property before it was damaged, when admissible. *Armour*, 110/403, 35 S. E. 787.

To adjust claim not legally enforceable, not received to prove liability. *Cook*, 23 A. 284, 98 S. E. 92.

To "call off the trade;" when admissible in suit for breach of contract. *McIntosh*, 12 A. 305, 77 S. E. 6.

Oil, test of, when admissible. *Standard Oil Co.*, 15 A. 571, 84 S. E. 69.

Omission to introduce, as matter for comment by counsel in argument to jury. *Adkins*, 147/136, 93 S. E. 92. Omitted from brief, though introduced at trial, not considered. *Elwell*, 101/496, 28 S. E. 833.

Opening and conclusion not gained by withdrawing testimony, when. *Daniels*, 8 A. 470, 69 S. E. 588.

Opportunity of witness to see and observe, admissibility of testimony of experiments to test. *Hicks*, 146/221, 91 S. E. 57.

Opprobrious words, as justification of assault, not admissible unless used in presence of accused at time of. *Berry*, 105/683, 31 S. E. 592.

Order in which evidence introduced, discretion of court as to. *Williams*, 123/140, 51 S. E. 322; *Boston Mercantile Co.*, 123/458, 51 S. E. 466; *Minchew*, 5 A. 154, 62 S. E. 716; *McDaniel*, 103/270, 30 S. E. 29; *Cooper*, 103/63, 29 S. E. 439; *Coleman*, 141/733, 82 S. E. 228. See *Shippen Co.*, 141/683, 81 S. E. 1113. Admitting declaration of conspirator before proof of conspiracy, not ground for new trial. *McDaniel*, 103/270, 30 S. E. 29.

Of ordinary, for sale, as evidence of legal necessity to sell land, confined to land to which it relates. *Dixon*, 110/509, 35 S. E. 781.

Ordinance of city, applicable to steam locomotive railroad, irrelevant in action against electric street railroad. *Hill*, 107/66, 28 S. E. 631.

Other criminal acts than the one charged, admissibility of. *Goldberg*, 20 A. 163, 92 S. E. 957; *Carter*, 15 A. 343, 83 S. E. 153; *Wilensky*, 15 A. 360, 83 S. E. 276; *Reddick*, 15 A. 439, 83 S. E. 675; *Holmes*, 12 A. 359, 77 S. E. 187; *Gunter*, 19 A. 772, 775, 92 S. E. 314; *Griffin*, 18 A. 462, 89 S. E. 537; *Bates*, 18 A. 718, 719, 90 S. E. 481; *Saffold*, 11 A. 329, 75 S. E. 338; *McCrary*, 11 A. 788, 76 S. E. 163; *Cooper*, 13 A. 697, 79 S. E. 908. Rule as to inadmissibility of, and exceptions to the rule; when admissible to illustrate intent. *McDuffie*, 17 A. 343, 86 S. E. 821; *Lee*, 8 A. 413, 69 S. E. 310; *Frank*, 141/244, 80 S. E. 1016.

Other fires than the fire causing damage sued for, admissibility of evidence as to. *Tallulah Falls Ry. Co.*, 20 A. 353, 93 S. E. 161.

Other occurrences, admissibility of, as tending to show negligence in a particular instance. *Netzow*, 7 A. 164, 66 S. E. 399. Other criminal acts than that charged. *Webb*, 7 A. 37, 66 S. E. 27; *Hall*, 7 A. 120, 66 S. E. 390.

Ownership of goods sold, that plaintiffs were agents under del credere commission from original shippers was relevant on issue as to. *Ross*, 112/628, 37 S. E. 868.

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Possession as evidence of. *Culpepper*, 18 A. 183, 89 S. E. 161.

Of railroad by an individual, admissibility of evidence as to, in suit for personal injury. *Peterson*, 117/391, 43 S. E. 713.

Oyster-beds natural, location of, how determined. *Jones*, 110/203, 35 S. E. 375.

Pain and suffering, admissibility of evidence as to, in suit under Federal "employer's liability act." *A. C. L. R. Co.*, 21 A. 704, 706, 94 S. E. 909.

When admissible to prove complaints and expressions indicating. *Powell*, 101/10, 29 S. E. 309, 65 Am. St. R. 277; *Central Ry. Co.*, 22 A. 35, 95 S. E. 323.

Complaints of, to physician, when not admissible. *Atlanta R. Co.*, 121/83, 49 S. E. 818. When admissible as *res gestæ*. *Ib.*

Complaints of, by slayer who claimed he was choked by deceased, made on day of homicide, received. *Powell*, 101/10, 29 S. E. 309.

Moaning and groaning in sleep, admissible to show, when. *Southern Ry. Co.*, 10 A. 541, 73 S. E. 763.

Mental, evidence of, admissible under allegation of "great pain." *Nashville R. Co.*, 120/453, 47 S. E. 959, 67 L. R. A. 87, 1 Ann. Cas. 210.

Part irrelevant in testimony offered as a whole, exclusion of the whole no cause for reversal. *Smith*, 113/77, 38 S. E. 312. See *Chambers*, 113/343, 38 S. E. 848; *Bridges*, 143/581, 85 S. E. 856; *Burch*, 118/931, 45 S. E. 698; *Tillman*, 134/661, 68 S. E. 504.

Of statement introduced, right of other side to introduce remainder. *Smalls*, 105/671, 31 S. E. 571.

Of conversation or document introduced to show an admission, not render admissible other parts which are irrelevant and wholly disconnected. *Brown*, 119/573, 46 S. E. 833.

Admissible, objection to whole not good, see catchword "Objection."

Partition decree, testimony going behind, not admissible. *Goolsby*, 146/763, 92 S. E. 521.

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Informal, testimony of appraiser on, as to intention, inadmissible. *Dixon*, 135/184, 69 S. E. 21.

Proceedings were regular, and not open to objections raised. *Lee*, 138/646, 75 S. E. 1051. Partitioner who signed return not estopped to testify that division was not fair and equitable. *Cox*, 142/487, 83 S. E. 115.

Partnership, admissibility of evidence on issue of; burden of proof. *American Cotton College*, 138/147, 148, 74 S. E. 1084; *Friese*, 15 A. 786, 84 S. E. 219; *Mims*, 3 A. 247, 59 S. E. 711; *Shaw*, 133/446, 66 S. E. 240. See *Bank*, 133/779, 67 S. E. 83.

Admissibility of evidence on issue whether defendants were members of. *Hutchinson Shoe Co.*, 143/170, 84 S. E. 453.

Assets and debts, relevancy of testimony as to, in suit on administrator's bond. *Am. S. Co.*, 2 A. 645, 58 S. E. 1116.

Debtor, acceptance of assignment and mortgage by plaintiffs, as recognition of parties who constituted. *Stewart*, 102/839, 30 S. E. 264.

Dissolution, admissibility of evidence to show notice of. *Bush*, 127/308, 56 S. E. 430, 9 Ann. Cas. 240.

Dissolution agreement, when not admissible in defense to suit on note of partnership. *Preston*, 120/546, 48 S. E. 316.

Existence of, and liability as partner, evidence tending to show. *Baird*, 137/482, 73 S. E. 632; *Walls*, 141/594, 81 S. E. 866.

Liability of, for debt sued on, evidence as to, when rejected. *Bray*, 131/638, 62 S. E. 1025.

Proof of, when not necessary in suit against parties as a firm. *Henderson W. Co.*, 105/221, 31 S. E. 551; *Stricklin*, 1 A. 139, 58 S. E. 215; *Crockett*, 4 A. 361, 364, 61 S. E. 552.

Proof of, by testimony of alleged partner; not by declarations, written or spoken, to the other witness. *Davidson*, 2 A. 432, 58 S. E. 687, 688. Partner's testimony of private agreement

of firm members, when admissible is suit against them. *Chicago Building &c. Co.*, 139/816, 78 S. E. 244.

Passenger transportation, overcharge for; what evidence immaterial in suit for penalty. *Central Ry. Co.*, 141/342, 30 S. E. 1044. Conductor's efforts to suppress disorder among passengers, before plaintiff became a passenger, when irrelevant. *Southern Ry. Co.*, 112/127, 37 S. E. 161.

Past action of principal as to agent's wrongful pawn, not admissible on trial involving later similar conduct of agent. *Harris Co.*, 110/302, 34 S. E. 1003.

Paternity, evidence of. Proof of cohabitation. *Harrison*, 148/489, 96 S. E. 1038.

Payment as evidence of liability; drawee's payment of draft did not preclude him from proving he was not indebted to drawer. *Drew*, 113/605, 38 S. E. 967.

Defendant not harmed by introduction of plaintiff's statement of payments, when. *Watkins*, 14 A. 321, 30 S. E. 694.

Inference of; failure to enforce collection of note for fifteen years, and omission to return note for taxation, considered. What not admissible to shown non-payment. *Norton*, 134/21, 22, 67 S. E. 425.

Of salary as defense; its collection by corporation's treasurer who applied it to debt by officer's authority, admissible. *Talbotton R. Co.*, 106/229, 32 S. E. 151.

Plea of, not necessary, in suit against guarantor, to warrant admission of evidence that the principal debtor paid the guaranteed debt. *Bank of Wrightsville*, 119/288, 46 S. E. 94.

Exclusion of party's testimony to correctness of list of payments and credits, no cause for reversal. *Bennett*, 148/66, 95 S. E. 690.

Testimony as to, not admissible, without plea of payment. *McMillan*, 18 A. 445, 89 S. E. 635.

Testimony of, in defense to action for part of recited consideration for land conveyed. *Coles*, 148/21, 95 S. E. 963.

To husband of life-tenant, consent to, by executory legatees, how construed. **Crawford**, 110/729, 36 S. E. 404.

Testimony of, not admitted on plea of general denial to suit on open account. **Dickson**, 137/299, 73 S. E. 515.

Testimony to show agreement on definite future time of, when not admissible. **Hawkins**, 132/266, 63 S. E. 852, 131 Am. St. R. 190.

Pedigree not proved by reputation in community. **Lamar**, 108/161, 33 S. E. 958.

"Perhaps;" uncertainty of witness who testified that "perhaps" he saw a certain thing done, and that he did not remember when it was, did not render the testimony incompetent. **Borders**, 18 A. 333, 89 S. E. 451.

Physical condition of person killed, when relevant. **Wells**, 115/577, 42 S. E. 39.

Physical laws in conflict with. **Parrott**, 7 A. 711, 67 S. E. 1049.

Physical symptoms, insomnia, pain, etc., testimony of, admissible. **Georgia Railway & Co.**, 133/621, 66 S. E. 944.

Physician's testimony as to demoralizing effects of cocaine, admissibility of. **Howard**, 18 A. 6, 89 S. E. 443.

Examination, admissibility of. **S. A. L. Ry.**, 131/799, 63 S. E. 344.

Fees at different locality, admissibility of testimony as to. **Dillard**, 140/17, 78 S. E. 414.

Bills, etc., that defendant had paid, when not admissible in suit for damages. **Holland**, 134/679, 68 S. E. 555, 19 Ann. Cas. 1032.

Place of business, proprietorship of, how shown. **Brooks**, 19 A. 3, 90 S. E. 989.

Plan, practice, scheme, or system of criminal acts, admissibility of evidence as to. **Frank**, 141/243, 80 S. E. 1016.

Plea bad in substance, exclusion of evidence in support of, in absence of demurrer. **Daniel**, 13 A. 393, 79 S. E. 237; **Walden**, 124/145, 52 S. E. 323; **Halliday**, 128/639, 58 S. E. 169.

Necessary as basis of evidence, not allowed, admission of evidence was error, though disallowance of plea was error; error immaterial, in view of

result of trial. **Birmingham Fertilizer Co.**, 13 A. 759, 79 S. E. 927.

Necessary, to authorize evidence as to want of consideration. **Butler**, 17 A. 533, 87 S. E. 809.

Not sustained by, excluded from consideration of jury. **Hickman**, 10 A. 319, 73 S. E. 596.

Evidence admissible under one plea, not under the other, objection overruled. **Philip Carey Co.**, 1 A. 311, 57 S. E. 929.

Special, necessary to authorize proof in mitigation of plaintiff's demand. **Phillips Lumber Co.**, 7 A. 222, 66 S. E. 623.

Pleading need not set forth evidence by which alleged facts are to be proved. **Cedartown Co.**, 2 A. 79, 58 S. E. 289; **Woodruff**, 2 A. 361, 58 S. E. 551.

Bad, when evidence received in support of; and when rejected. Decisions in conflict. **Kelly**, 116/872, 43 S. E. 280; **Oxford**, 6 A. 642, 65 S. E. 791.

Amended so as to conform to evidence, and motion to exclude overruled. **Hyer**, 12 A. 837, 79 S. E. 58.

Evidence by way of amendment, not allowable. **Alabama Construction Co.**, 131/365, 62 S. E. 160.

As basis of, not required of plaintiff, to dispute defense set up, when **International Harvester Co.**, 19 A. 716, 721, 92 S. E. 35; **Tifton Ry. Co.**, 4 A. 191, 195, 60 S. E. 1087.

Testimony warranted by. **Strickland**, 147/494, 94 S. E. 766.

As evidence for opposite party, though stricken. **Hester**, 128/538, 58 S. E. 165.

Distinct in petition, undenied, taken as true; evidence not needed. **Abbeville Trading Co.**, 3 A. 138, 59 S. E. 450. Contrast **Hicks**, 3 A. 117, 59 S. E. 331. Pleading act (Civil Code, § 5539), as affecting requirements as to proof. **Sanders**, 107/59, 32 S. E. 610.

Evidence not authorized by, but admitted without objection; effect of. **Ayash**, 21 A. 264, 94 S. E. 282.

Necessary as basis of admission of testimony that decedent was engaged in

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interstate commerce. *L. & N. R. Co.*, 143/742, 85 S. E. 923.

Necessary for admission of, in defense. *Bray*, 131/638, 62 S. E. 1025.

Not authorizing evidence, but defense in default, and defect amendable; no new trial for admitting. *Methodist Church*, 137/68, 72 S. E. 480.

Not sufficient to authorize introduction of evidence, no ground for new trial, where the evidence was admitted without objection. *Parsons*, 22 A. 279, 95 S. E. 1009.

Not evidence; no prejudicial error in charge to jury to this effect. *Ga. Life Ins. Co.*, 12 A. 863, 78 S. E. 1115.

Objection that evidence was not authorized by, not well taken. *Neal*, 131/701, 63 S. E. 221.

Serves as evidence, where verified, on hearing for injunction. *St. Amand*, 120/253, 47 S. E. 949. Part of defendant's plea introduced by plaintiff, he may still rebut such of it as is adverse. *Christian*, 120/314, 47 S. E. 923.

Sufficient to introduce, if no special demurrer. *Atlanta Con. St. R. Co.*, 108/223, 33 S. E. 886.

Testimony not authorized by, properly excluded. *Chattahoochee Valley Ry. Co.*, 9 A. 84, 70 S. E. 683; *Kelley*, 5 A. 619, 63 S. E. 639.

That "engine" was defective, etc., covered testimony that "grates of the engine" were burned out. *Brown*, 101/753, 29 S. E. 215.

Error in striking, when cured by admitting evidence in support of allegations. *Cook*, 143/127, 84 S. E. 559.

To authorize evidence, cured by amendment, objection to introduction overcome. *Niagara Ins. Co.*, 1 A. 603, 57 S. E. 1018.

What testimony not admissible for want of. *Holland*, 134/679, 68 S. E. 555, 19 Ann. Cas. 1032.

Pledge in parol, to secure debt for price of thing pledged, and debt unpaid, competent testimony. *Loveless*, 136/339, 71 S. E. 166.

Poisoning, admissibility of evidence on trial for murder by, as to poisoning

others. *Cawthon*, 119/408, 46 S. E. 897.

Possession and use of goods soon after date of sale to defendant, admissible in suit on account for their price. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

Actual, admissibility of testimony on issue of, as to cutting of timber. *Brookman*, 148/722, 98 S. E. 543. See **Title**.

Administrator's application for leave to sell, not admissible as evidence of. *Luttrell*, 120/70, 49 S. E. 691.

Adverse; admissibility of acts and declarations, including record of suit. *Godley*, 132/514, 64 S. E. 546.

Adverse, admissibility of evidence as to. *Weeks*, 133/479, 66 S. E. 163, 134 Am. St. R. 213.

Adverse, deed by tenant a declaration of. *Willis*, 118/906, 912, 45 S. E. 794.

Adverse, testimony of paying taxes and "back boxing" trees, admissible to show. *Mitchell*, 134/383, 67 S. E. 1042.

As evidence of ownership. *Culpeper*, 18 A. 183, 39 S. E. 161.

Four years before levy, testimony pertinent as to. *Rosser*, 102/164, 29 S. E. 171.

Held at death, report of appraisers of estate is incompetent to show. *Copeland*, 147/601, 95 S. E. 13.

Of grantor after conveyance, evidence as to whether in his own right, when not admissible against second grantee. *Equitable Securities Co.*, 113/1013, 39 S. E. 434.

Of grantees from life-tenant before falling in of estate for life, not admissible to prove prescription as against remaindermen. *Brinkley*, 131/226, 62 S. E. 67.

Of land, admissibility of testimony as to. *Tison*, 8 A. 91, 68 S. E. 651.

Of land by wife, her testimony as to, held admissible. *Mercer*, 136/632, 71 S. E. 1075.

Of land, competency that person was in actual; query as to constructive. *Copeland*, 144/636, 87 S. E. 1034.

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Official letters asking permission to go on land not received to show. *Copeland*, 601, 95 S. E. 13.

Retained by grantor, as evidence of fraud. *Virginia-Carolina Chemical Co.*, 23 A. 684, 99 S. E. 154.

Of land can not be proved by family repute. *Luttrell*, 121/699, 49 S. E. 691.

Permissive and not adverse, admissibility of testimony tending to show. *Causey*, 143/8, 84 S. E. 58.

Question and answer on cross-examination as to, when competent. *Shingler*, 135/666, 70 S. E. 563.

Testimony that it was the "understanding" of the witness that a certain person was in possession, and that he "seemed" to be, inadmissible. *Howell*, 121/461, 49 S. E. 299.

Testimony of, too indefinite. *Rowe*, 139/321, 77 S. E. 17.

To support prescription under color. *Bussey*, 104/154, 30 S. E. 646.

When material to an issue, witness may testify he was in actual possession of realty at a specified time. *Sweeney*, 121/293, 48 S. E. 984.

Of stolen property held by woman with whom accused was intimate, when admissible. *Clay*, 122/136, 50 S. E. 56.

Of stolen goods as a circumstance of guilt. *Turner*, 114/45, 39 S. E. 863; *Gravitt*, 114/841, 40 S. E. 1003, 88 Am. St. R. 63; *McElroy*, 125/37, 53 S. E. 759; *Andrews*, 116/85, 42 S. E. 476.

Post-office, notice through; how proved. *Lewis*, 18 A. 181, 89 S. E. 177.

Poverty of decedent, proof as to, in suit by widow for his homicide, inadmissible. *Brunswick R. Co.*, 113/842, 39 S. E. 551, 61 L. R. A. 13. Necessity to work for support of family, admissibility of evidence as to. *Macon R. Co.*, 113/214, 38 S. E. 756.

Practice as to introduction of. Counsel may be required to read or state contents of documents as offered, as condition of considering them as introduced. *Shippen Co.*, 141/683, 81 S. E. 1113.

Of admitting, "for the present," instead of ruling directly on objection, not approved. *Becker*, 133/864, 67 S. E. 92.

Precautions after injury, to prevent similar injury, testimony as to, irrelevant. *Central Ry. Co.*, 121/658, 49 S. E. 683.

To prevent passengers from alighting on parallel track, by use of guards or ropes on platform of car; absence of, as showing negligence. *Atlanta Con. St. R. Co.*, 103/333, 30 S. E. 41.

Pregnancy of woman ravished and murdered, admissibility of testimony as to. *Hart*, 141/672, 81 S. E. 1108.

Prejudicial and irrelevant, tending to arouse indignation of jury against accused, error in admitting, did not require reversal. *Wilson*, 9 A. 289, 290, 70 S. E. 1128.

Preliminary showing, evidence received without requiring, is to be considered, if relevant. *Helms*, 136/799, 72 S. E. 246.

Prescriptive title, admissibility and sufficiency of evidence as to. *Baker*, 136/541, 542, 71 S. E. 871.

As to private way. *Nashville & C. Ry.*, 133/820, 66 S. E. 1085.

Presence of accused at or near place and time of offense, as circumstance of guilt. *Sanders*, 118/329, 45 S. E. 365. Compare *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33; *Webb*, 133/585, 587, 66 S. E. 784.

Of accused when deceased received money illustrated motive for homicide. *Cook*, 134/347, 348, 67 S. E. 812.

Of deceased at place of homicide, relevant explanation of; that he had been requested, etc. *Patterson*, 134/264, 67 S. E. 816; *Ricketson*, 134/306, 67 S. E. 881. Compare *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Presumed admissible, unless objection shows otherwise. *Jasper County*, 147/672, 95 S. E. 254.

Previous conduct and threat to shoot, when no error in excluding testimony of, on trial for murder. *Pressley*, 132/65, 63 S. E. 784.

Admissibility of, as tending to show act in question. *Lipham*, 125/52, 53

S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Previous difficulty, testimony of, admitted. *Coleman*, 141/736, 82 S. E. 228. When not admissible. *Daniel*, 103/202, 29 S. E. 767. Discussion of rules as to admissibility of. *Baker*, 142/619, 621, 83 S. E. 531.

Previous improper conduct of man and woman in another county, admissible on trial of indictment for adultery. *Nobles*, 127/213, 56 S. E. 125.

Previous testimony, response of witness as to, when not excluded at instance of counsel asking question. *Sims*, 131/263, 62 S. E. 192.

Price, as evidence of value. *Allen*, 113/107, 38 S. E. 322; *Southern Ry. Co.*, 113/336, 38 S. E. 744; *Atlanta Baggage Co.*, 4 A. 407, 61 S. E. 844.

Contract of sale silent as to, evidence of reasonable price received. *Stewart*, 118/541, 45 S. E. 398.

Received for damaged goods, admissible without producing account of sales. *Armour*, 110/403, 35 S. E. 787.

Reasonableness of, proved, though fixed by contract. *White*, 105/30, 31 S. E. 119.

Principals in first and second degrees of murder; admissibility and sufficiency of evidence. *Lewis*, 136/355, 71 S. E. 417.

Prior dealing irrelevant; payment of other account made by same special agent. *Southern Ry. Co.*, 136/303, 71 S. E. 422.

Prisoner's statement not to be considered in finding guilt or innocence of others indicted and tried jointly with him. *Berry*, 121/429, 50 S. E. 345.

Illegal and harmful evidence not received in rebuttal of. *Owens*, 118/753, 45 S. E. 598. Prisoner, after making his statement, submitted to cross-examination; no error in excluding further questions by his own counsel. *Lindsey*, 138/819, 76 S. E. 369.

Privilege to exclude communications is distinct from disqualification to testify. *McCord*, 140/173, 78 S. E. 833. See *Anderson*, 140/802, 79 S. E. 1124.

Of witness, not claimed by him, not available as ground of motion to exclude testimony. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Privileged communication, admission by husband to wife, overheard by witness, is not. *Williams*, 139/591, 77 S. E. 818.

Between attorney and client, mere casual conversations not. *Coker*, 4 A. 728, 62 S. E. 483. Privileged or confidential communication, what statement of maker of deed to his attorney was not. *Fuller*, 137/66, 72 S. E. 504.

Between husband and wife, excluded as; but privilege may be waived, how. *McCord*, 140/170, 78 S. E. 833. Objection, cause of, must be urged when evidence offered. *Holloway*, 140/381, 78 S. E. 928.

Confidential report of delinquent debtor is not. *W. U. Tel Co.*, 108/412, 34 S. E. 216.

Rule as to, touching competency of witness. *O'Brien*, 102/492, 31 S. E. 100. Privileged communications or State secrets, testimony by attorney was not incompetent as. *Fite*, 142/660, 83 S. E. 515.

Wife's exclamation to husband (slayer) not excluded as. *Nunn*, 143/454, 85 S. E. 346.

Probate of will in solemn form, how made. *Bowen*, 136/859, 72 S. E. 340.

Admissibility of evidence on trial of issue as to. *McFarland*, 144/63, 86 S. E. 227; *Penn.*, 144/67, 86 S. E. 233; *Whiddon*, 144/77, 86 S. E. 243; *Shewmake*, 144/801, 87 S. E. 1046; *Edenfield*, 143/96, 97, 84 S. E. 436; *Holland*, 148/277, 96 S. E. 419; *Slaughter*, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Caveated; admissibility of transcript of testator's testimony in another case. *Freeman*, 147/700, 95 S. E. 236.

Exclusion of evidence not identifying it, nor elucidating issue of its execution. *Nash*, 147/209, 93 S. E. 203.

In solemn form; validity of probate in common form in other State not pertinent. *Worsham*, 144/707, 87 S. E. 1025.

In solemn form; testimony on issue by caveat on ground of fraud in procurement. *Churchill*, 142/352, 82 S. E. 1065.

In solemn form, what evidence admissible and sufficient for. *Wells*, 140/119, 78 S. E. 823, 47 L. R. A. (N. S.) 722, Ann. Cas. 1914C, 898.

In solemn form; witness inaccessible; proof of handwriting, or testimony by commission. *McFarland*, 143/598, 85 S. E. 758.

Not refused because witnesses saw but one of several pages on which will was written. *Owen*, 145/287, 88 S. E. 964.

That residuary clause disposed of certain land, held incompetent. *Davis*, 148/512, 97 S. E. 440.

Admissibility of paper over objection that its identity with one about which witness testified did not appear. *McFarland*, 144/63, 86 S. E. 227.

Processioning, admissibility of evidence on trial of protest to return. *Castleberry*, 135/528, 69 S. E. 817.

Admissibility of testimony showing notice to and presence of protestant. *Garrett*, 134/442, 67 S. E. 1036. Of plat of the survey. *Caverly*, 134/677, 68 S. E. 442.

Objectionable testimony on trial of protest to return. *Brantley*, 143/73, 84 S. E. 434.

Procured by improper means, not excluded. *Sanders*, 113/269, 38 S. E. 841.

Production evidence, effect of failure in. *Central Ry. Co.*, 120/83, 47 S. E. 641, 1 Ann. Cas. 806; *Lee*, 2 A. 485, 58 S. E. 676.

Refusal of injured plaintiff to permit examination of her person, may be proved. *City of Cedartown*, 2 A. 583, 59 S. E. 836.

No law requiring, of one accused of crime, for use on trial therefor. *Moore*, 130/333, 60 S. E. 544.

Professional services, value of, not shown by proof of what was paid for them. *Allen*, 113/107, 38 S. E. 322; *Southern Ry. Co.*, 128/819, 58 S. E. 470.

One suing on value of, may prove professional standing. This includes

a veterinary surgeon. *Marshall*, 1 A. 485, 57 S. E. 1006.

Profits of business, proof of, when admissible in estimating damages, to leasehold estate. *Hayes*, 1 A. 26, 57 S. E. 1087.

On sale of goods, testimony of, when not admissible to prove damages from their non-delivery. *Southern Express Co.*, 134/446, 67 S. E. 944; 137 Am. St. R. 227.

Lost, not proved by showing profits in corresponding months of next year. *Fla. R. Co.*, 112/1, 37 S. E. 130.

Loss of, when admissible. *Bass*, 110/703, 86 S. E. 244; *Gore*, 110/902, 903, 86 S. E. 315.

Made by agent or trustee by loaning at usury, admissible in action for account and settlement. *Teasley*, 110/508, 35 S. E. 782, 78 Am. St. R. 113,

Promise afterward made, when irrelevant on issue as to making of original agreement. *Lovell*, 145/106, 109, 88 S. E. 569.

Promissory note sued on was last of several renewals, and consideration of original note, competent without producing any of these. *Merchants Bank*, 104/165, 30 S. E. 650.

Proof adjusted to plea, defense sustained. Evidence too vague, indefinite, and uncertain to authorize verdict, must be objected to at trial. *Burr*, 2 A. 52, 58 S. E. 373.

Proposal of one party not admissible to show bad faith of the other party who rejected it. *Ivey*, 124/161, 52 S. E. 436, 110 Am. St. R. 160.

Proprietorship of place of business, proof of, on trial of one charged with keeping liquor for sale. *Borders*, 18 A. 333, 89 S. E. 451; *Brooks*, 19 A. 3, 90 S. E. 989.

Publicity or secrecy of debtor's living at other place after leaving former residence, relevancy of. *Dale*, 141/595, 81 S. E. 849.

Public policy, exclusion of evidence on ground of; as, husband's testimony of wife's adultery. *Bishop*, 124/294, 52 S. E. 743.

Public road, that convicts worked strip of land prior to 1884, not admissible to show. *Murphy*, 135/194, 69 S. E. 117. How shown. *Hutchinson*, 8 A. 684, 70 S. E. 63.

Punishment, evidence to affect jury's action as to, rejected. *Perry*, 110/234, 36 S. E. 781.

Purchase-money, evidence competent to show that debt secured by mortgage was for. *Cobb*, 136/255, 71 S. E. 145.

Purpose, consideration of evidence restricts to one. *Churchill*, 132/668, 64 S. E. 691, 49 L. R. A. (N. S.) 87b, Ann. Cas. 1913E, 1203.

For which received, how confined to. *McCommons*, 131/319, 62 S. E. 230; *Central Ry. Co.*, 138/107, 74 S. E. 839.

Matter for requested instruction to jury. *Purvis*, 145/519, 89 S. E. 571; *Gordon*, 141/348, 80 S. E. 1007.

For which offered, when not control in determining whether court erred in admitting. *Womble*, 107/666, 33 S. E. 630.

For which testimony could be considered, when court erred in restricting. *McConnell*, 134/95, 67 S. E. 440.

For which testimony offered not explicitly stated, but apparent, no reason for excluding. *Athens Mfg. Co.*, 134/600, 68 S. E. 329. Evidence not admissible for all purposes, not excluded if admissible for one. *Stallins*, 140/56, 78 S. E. 421.

Quantum meruit, evidence pertinent to case based on, not relevant in action for specific performance. *Gordon*, 148/394, 96 S. E. 1006.

Quantity, size and number of pieces of lumber, knowledge and opinion as to, admissible. *Ga. &c. Ry. Co.*, 133/136, 65 S. E. 381.

Question, form of; improper practice, when no cause for new trial. *Southern Bell Tel. Co.*, 139/567, 77 S. E. 382.

Leading, allowance of, a matter of discretion; comments on undue strictness in refusing to allow. *G., F. & A. Ry. Co.*, 4 A. 288, 61 S. E. 505. See *Fouraker*, 4 A. 693, 62 S. E. 116. When leading. *Sivell*, 115/667, 42 S. E. 151. Leading questions, if in any

event ground for new trial, are not so when it does not appear what the answers were. *Brunswick R. Co.*, 129/175, 58 S. E. 705.

Leading, allowance of, discretionary. *Cabaniss*, 8 A. 130, 68 S. E. 849; *Grusin*, 10 A. 152, 75 S. E. 350; *Beaudrot*, 126/579, 55 S. E. 592; *Jones*, 128/23, 57 S. E. 313; *McBride*, 125/515, 54 S. E. 674; *Rusk*, 117/723, 45 S. E. 42; *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103; *Taylor*, 121/348, 49 S. E. 303.

Not allowed, party asking it should be allowed to show what the witness would answer; how shown. *Holland*, 126/617, 55 S. E. 1023.

Partly objectionable, whole of answer excluded. *Slaughter*, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Relevancy of, not apparent, purpose should be stated or testimony rejected. *Keller*, 102/506, 31 S. E. 92.

Question or answer, exception to refusal to allow, should show what; distinction made as to cross-examination. *Griffin*, 117/382, 43 S. E. 712.

As to whether another witness was mistaken if he made a certain statement; refusal to allow, not error here. *Campbell*, 123/533, 51 S. E. 644.

Form of, objectionable as telling sequestered witness what accused had stated. *James*, 1 A. 780, 57 S. E. 959.

Refusal to allow answer, no cause for new trial, where it appeared that witness testified to all he knew as to subject-matter of examination. *Elliott*, 115/926, 42 S. E. 218; *City Electric R. Co.*, 121/664, 49 S. E. 724.

Refusal to allow, harmless, where others of similar import were answered. *Kessler*, 126/727, 55 S. E. 963, 8 Ann. Cas. 180.

Useless repetition of questions may be restrained by judge. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

Expected answer, to, should be stated, upon objection being made. *Green*, 134/482, 68 S. E. 77; *Tillman*, 134/660, 68 S. E. 504; *International Ins. Co.*, 11 A. 64, 75 S. E. 1058; *Carter*, 2 A. 255, 58 S. E. 532.

Error in refusing to allow, not considered where the expected answer is not set forth, etc. *Bigby*, 115/386, 41 S. E. 622, 57 L. R. A. 754; *Freeman*, 115/1017, 42 S. E. 369; *Linder*, 119/41, 45 S. E. 732; *Ga. R. Co.*, 113/12, 38 S. E. 336.

By judge to witness, when proper. *Ray*, 4 A. 72, 60 S. E. 816; *Smith*, 11 A. 90, 74 S. E. 711. Improper here. *Brown*, 11 A. 164, 74 S. E. 1002; *Murphy*, 13 A. 431, 79 S. E. 228. Questions may be propounded by judge, so as not to express or intimate opinion as to credibility of the witness. *Johnson*, 122/670, 50 S. E. 488; *Grant*, 122/740, 50 S. E. 946. That testimony detrimental to one party is thus elicited is no ground of exception. *Ib.* 670.

Race and social status, difference in, on question of intent to ravish. *Dorsey*, 108/477, 34 S. E. 135.

Railroad crossing street grade level, pertinent in action for injury by horse frightened by engine. *Shiver*, 143/791, 85 S. E. 1031.

Engine without brakes, error in excluding proof as to. *Dean*, 6 A. 480, 65 S. E. 300.

Failing to furnish cars, what evidence admissible in action for. *Southern Ry. Co.*, 135/35, 54, 68 S. E. 807.

Right of way, testimony as to conveyance and giving of, when admissible. *Watters*, 133/641, 66 S. E. 884. Damages from condemning. *Savannah Ry. Co.*, 133/679, 66 S. E. 942.

Train signals at crossing other than that where injury happened, facts as to, when irrelevant. *Atlanta R. Co.*, 122/101, 49 S. E. 818.

Rape, admissibility of evidence on trial for; condition of females's clothing, and other circumstances. *Chambers*, 141/652, 81 S. E. 880.

Evidence of woman's complaint after. *Allen*, 140/479, 79 S. E. 29; and see *Lane*, 140/222, 78 S. E. 837. Corroboration. *Ib.*

On issue of girl's capacity to consent, her mental and physical development are material. *Jones*, 106/366, 34 S. E. 174.

Shown, assault with intent to rape negatived. *Harris*, 101/530, 29 S. E. 423.

Ratification, acquiescence or non-action as showing, where deed taken in name of wrong person. *Jones*, 103/183, 29 S. E. 298.

After attaining majority, admissibility of testimony tending to show, in action to set aside deed made by minor. *Davis*, 137/450, 73 S. E. 579.

Letter not tending to show. *Langston*, 6 A. 833, 65 S. E. 1094.

Reasonableness of delay in inspection, testimony as to, excluded. *Smith*, 20 A. 313, 93 S. E. 74.

Of testator's disposition of his estate, relevancy of. *Gordon*, 141/347, 348, 80 S. E. 1007.

Reasonable time to remove timber, what matters considered in determining as to. *Howell*, 139/441, 442, 77 S. E. 564. *Southern Ry. Co.*, 18 A. 767, 30 S. E. 656.

Reason of judge for excluding, no ground for reversing correct ruling. *Willis*, 144/831, 88 S. E. 208.

For admitting, over objection, may be stated by judge without expressing opinion as to what has been proved. *Oliveros*, 120/242, 47 S. E. 627, 1 Ann. Cas. 114.

For search, admissibility of. *Hall*, 22 A. 112, 95 S. E. 936.

Of witness for observing relevant fact, admissible. *Taylor*, 135/622, 70 S. E. 237.

Rebuttal, discretion as to allowing testimony in. *Mendel*, 126/840, 56 S. E. 88, 7 L. R. A. 1184; *Seaboard Ry.* 18 A. 396, 89 S. E. 493; *City of Atlanta*, 139/389, 77 S. E. 393; *Caswell*, 5 A. 486, 63 S. E. 566; *Holland*, 9 A. 834, 72 S. E. 290.

Admitting evidence beyond range of, may not require a new trial. *Frank*, 141/245, 80 S. E. 1016.

By uncontradicted evidence, whether sufficient, as to prima facie case, a jury question. *Citizens Bank*, 15 A. 815, 84 S. E. 232.

Rebuttal—(Continued).

Explanation by witness, as to matter tending to discredit him, allowed. *Gazaway*, 15 A. 467, 83 S. E. 857.

Objection that testimony was not admissible in, but only in chief, not sustained. *Flemister*, 140/516, 79 S. E. 148.

Of statement of accused on trial for murder; testimony held admissible. *Lucas*, 146/315, 91 S. E. 72.

Of testimony received after the evidence had been closed. *Hicks*, 11 A. 266, 267, 75 S. E. 12.

Reopening case to receive testimony not strictly in rebuttal, discretionary. *Pitta*, 15 A. 436, 83 S. E. 673.

Testimony in, admissibility of. *Ehrlich*, 18 A. 143, 88 S. E. 994.

Testimony beyond proper scope of. *Williams*, 12 A. 341, 342, 77 S. E. 189.

Error in allowing witness on, to repeat practically his entire testimony previously given, some of it argumentative. *Cowart Co.*, 18 A. 512, 89 S. E. 1101.

Testimony not in; discretion of court as to admitting. *Standard Mills*, 125/653, 4 S. E. 60. After defense closed. *Green*, 119/120, 45 S. E. 990; *Cooper*, 103/63, 29 S. E. 439.

Of doubtful admissibility, reception of, did not require new trial. *Williams*, 139/811, 78 S. E. 253.

Testimony in, that might have been introduced on first examination, admissible when. *Seaboard Air-Line Ry.* 18 A. 266, 89 S. E. 384; *Southern Ry. Co.*, 120/563, 61 S. E. 226.

Testimony too prejudicial to be admissible in rebuttal of statement of accused (as to former offense). *Grace*, 19 A. 606, 92 S. E. 231.

Witness recalled, asked questions not strictly in rebuttal; no abuse of discretion in allowing this. *Odum*, 21 A. 312, 94 S. E. 257.

Recalling witness, discretion as to, not controlled. *Dixon*, 116/186, 42 S. E. 357. So though witness has conferred with counsel. *Central of Ga. Ry. Co.*, 116/346, 42 S. E. 510.

Reception of, before amendment of pleading, improper, though amendment promised. *McConnell*, 134/95, 67 S. E. 440.

Recital in ground of objection not taken as true, where unsupported by the record. *Steadham*, 141/146, 80 S. E. 624.

Recognition of corner or line, testimony as to, inadmissible, when it does not appear what landowners so recognized. *Hix*, 124/547, 52 S. E. 890.

Recognizance, forfeiture of. Surety's objections to admission of evidence here properly overruled. *Kirkland*, 114/739, 40 S. E. 734.

Not forfeited on extrinsic evidence of essential fact not alleged by indictment. *Rogers*, 138/750, 75 S. E. 1131.

Redirect examination as to matter brought out on cross-examination. *Southern Ry. Co.*, 128/429, 57 S. E. 703.

Not strictly in rebuttal, allowed. *Kidd*, 101/528, 28 S. E. 990.

Reformation of instrument; character of evidence required. *Robertson*, 148/81, 95 S. E. 973.

Of voluntary deed, for mistake; character of evidence required. *Clark*, 141/437, 438, 81 S. E. 129.

Reintroduction of witness "for the purpose of making clear his testimony" as to a certain matter, discretion in refusing to allow. *Freyermuth*, 107/31, 32 S. E. 668. Judge's discretion as to. *Corker*, 8 A. 100, 68 S. E. 557.

Relationship, degrees of, how ascertained. *Smith*, 2 A. 574, 59 S. E. 311.

Of witness, to prosecution (principal and bail), when relevant. *Bates*, 4 A. 491, 61 S. E. 888.

Proof of. Witness not allowed to testify to resemblance. Exhibition of child was not error here. *Sims*, 16 A. 211, 84 S. E. 976.

"Relevant evidence" defined. *Alexander*, 7 A. 89, 66 S. E. 274. Relevancy dependent on testimony to be introduced after; admissible. *Carawell*, 7 A. 200, 66 S. E. 488. Relevancy of former negligence, in suit for negligence. *L. & N. R. Co.*, 7 A. 562, 67 S. E. 690. Relevant fact defined. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145.

Not excluded because of tendency to prove guilt of other crime than that on trial. *Frank*, 141/243, 80 S. E. 1016; *Lucas*, 146/315, 323, 91 S. E. 72.

Tending to sustain claim and to disprove adverse contention. *Summerford* 126/153, 54 S. E. 1025.

Not excluded because it does not prove whole case. *Rivers*, 118/44, 44 S. E. 859.

For one purpose, not for another, admitted. *Collins Park R. Co.*, 112/663, 37 S. E. 975.

Rule as to when circumstances are *Summit Wagon Co.*, 6 A. 147, 64 S. E. 489.

Indirectly tending to illustrate the issue. *Talbotton R. Co.*, 106/229, 32 S. E. 151.

Indefiniteness as to time of conversation, or as to subject-matter, etc., not render irrelevant, here. *Sivell*, 115/667, 42 S. E. 151.

Sundry rulings, in action for trespass in taking property. *Gray*, 127/548, 56 S. E. 752.

Tested by pleadings; testimony supporting allegation, admitted, whether tending to establish right to recover or not. *Tifton Ry. Co.*, 4 A. 191, 60 S. E. 1087.

No precise and uniform test of relevancy. *Kitchens*, 146/229, 232, 91 S. E. 81. Relevancy not apparent, no reversal for rejecting. *Hardwood Mfg. Co.*, 126/55, 54 S. E. 814; *Becker*, 138/635, 75 S. E. 1122. Relevancy is a judicial question to be determined according to circumstances of particular case. *Mulkey*, 1 A. 525, 57 S. E. 1022.

Relinquishment by assignor of rights under contract sued on by assignee, offer of, after transfer, inadmissible. *Perry*, 103/136, 29 S. E. 703.

Remark of judge in ruling on objection to, when no error. *Taylor*, 132/235, 63 S. E. 1116. In admitting, over objection, when no disparagement of. *Mayor &c. of Americus*, 3 A. 159, 59 S. E. 434. When depreciative of contention of party. *Martin*, 3 A. 784, 60 S. E. 825.

Renewal of lease, what admissible to prove. *Parker*, 127/561, 56 S. E. 846.

Rental value, proof as to depreciation in, admitted to show damage to property. *Savannah R. Co.*, 117/893, 45 S. E. 280; *City of Macon*, 113/1112, 39 S. E. 446.

Of land was not so material as to show error in excluding testimony. *Deal*, 147/523, 94 S. E. 1013.

Irrelevant in suit for unlawful eviction, where plaintiff's evidence showed that defendant re-entered as purchaser at sheriff's sale. *Rodgers*, 122/279, 50 S. E. 95.

Of land, how determined by jury. *Bonds*, 133/451, 66 S. E. 156.

Of land without improvements, how ascertained, in ejectment. *Bowman*, 133/49, 53, 65 S. E. 156.

Evidence as to, irrelevant where the amount of the rent was fixed by contract. *Moore*, 13 A. 392, 79 S. E. 246.

Rent, effect of payment and non-payment of, on issue as to gift of land in parol. *Holloway*, 140/380, 78 S. E. 928.

Recoupment of damages against, on distraint; what admissible and what not so. *Park*, 141/681, 81 S. E. 1105. Renting proved without producing written contract. *Borders*, 18 A. 333, 89 S. E. 451.

Reopening case to receive additional evidence, discretion as to. *Dent*, 14 A. 269, 80 S. E. 548; *Jackson*, 118/782, 45 S. E. 604; *Dunwoody*, 118/308, 45 S. E. 412; *Powell*, 101/10, 29 S. E. 309; *Huff*, 104/521, 30 S. E. 808; *Hunley*, 104/755, 30 S. E. 958; *Carr*, 108/757, 33 S. E. 190; *Merchants Bank*, 108/768, 33 S. E. 430; *Grusin*, 10 A. 152, 153, 75 S. E. 350; *Hoxie*, 114/20, 39 S. E. 944; *Holland*, 22 A. 135, 95 S. E. 538; *McClain*, 17 A. 750, 88 S. E. 409; *Ga. R. Co.*, 113/12, 38 S. E. 336; *Strickland*, 115/225, 41 S. E. 713; *Green*, 119/120, 45 S. E. 990; *Standard Cotton Mills*, 125/649, 54 S. E. 650; *Bundrick*, 125/753, 758, 54 S. E. 683; *Fordham*, 125/791, 54 S. E. 694;

Dunn, 16 A. 9, 84 S. E. 488; Simms, 16 A. 211, 84 S. E. 976; Tolbert, 16 A. 311, 85 S. E. 267; Pitts, 15 A. 436, 83 S. E. 673; Smith, 15 A. 713, 84 S. E. 159; Stoker, 23 A. 11, 97 S. E. 273; Mitchell, 23 A. 195, 98 S. E. 184; Daniels, 23 A. 765, 99 S. E. 312; Roberts, 123/146, 51 S. E. 374; Seaboard Air Line Ry., 139/471, 77 S. E. 632; Brooke, 122/358, 50 S. E. 146; Whitehead, 126/558, 55 S. E. 404; Smith, 126/804, 55 S. E. 1024; Bridger, 126/821, 56 S. E. 97, 8 L. R. A. (N. S.) 463, 115 Am. St. R. 118.

Discretion not controlled, unless abused. Powell, 101/10, 29 S. E. 309, 65 Am. St. R. 277; Glasco, 137/336, 73 S. E. 578; Ward, 112/75, 37 S. E. 111; Frazier, 112/869, 38 S. E. 349; Caswell, 5 A. 483, 63 S. E. 566. Discretion in, not abused. Abbott, 11 A. 44, 74 S. E. 621; Stewart, 11 A. 661, 75 S. E. 991; Jackson, 7 A. 644, 67 S. E. 898; Johnson, 130/27, 60 S. E. 160; Southern Ry. Co., 130/563, 61 S. E. 226; Mallard, 19 A. 100, 90 S. E. 1044. Not abused; case should be reopened whenever necessary in order to obtain the truth. Chatman, 8 A. 842, 70 S. E. 188; Odum, 21 A. 312, 94 S. E. 257.

Discretion in refusing to reopen, not abused. Moulton, 18 A. 285, 286, 89 S. E. 341; Leake, 5 A. 102, 62 S. E. 729; Stewart, 131/586, 62 S. E. 986. Error in refusal, on special facts. Wickham, 136/594, 598, 71 S. E. 881, 36 L. R. A. (N. S.) 57.

To allow evidence as to venue, no error. Brooks, 12 A. 104, 76 S. E. 765.

After charge to jury was begun. Goldberg, 22 A. 122, 95 S. E. 541.

After argument begun, discretion as to. Hilburn, 105/471, 30 S. E. 656. No abuse of discretion in refusing. Wooten, 139/433, 436, 77 S. E. 375.

To receive proof of incriminating statements of accused, by witness already examined in chief, no abuse of discretion. Milam, 108/30, 33 S. E. 818.

Evidence may be confined to one point. Bridger, 126/821, 56 S. E. 97,

8 L. R. A. (N. S.) 463, 115 Am. St. R. 118.

Error in imposing condition as to, waived by consent. Cutter-Tower Co., 5 A. 294, 63 S. E. 58.

To supply deficiency in proof and avoid nonsuit, should be allowed, where no good reason to the contrary. Ellenberg, 5 A. 390, 63 S. E. 240. But discretion not here abused in refusing to reopen. Polhill, 16 A. 601, 85 S. E. 936.

Exception to refusal to reopen should show what would have been testified. Stewart, 11 A. 661, 75 S. E. 991.

Where not in terms refused, consent implied. Moore, 1 A. 514, 58 S. E. 63.

Repetition in testimony, prevention of. Martin, 15 A. 496, 498, 83 S. E. 872; Hart, 14 A. 364, 80 S. E. 909. Need not be required. Chapman, 112/60, 37 S. E. 102.

Report of evidence, discretion of court as to reading to jury, to refresh their recollection. Strickland, 115/227, 41 S. E. 713.

Of employee to superior, admissibility of, as evidence against employer. C. & W. C. Ry. Co., 13 A. 748, 79 S. E. 932.

Representations or agreements not in presence of party, when admissible over his objection. Taylor, 139/797, 77 S. E. 1062; Chicago Building &c. Co., 139/816, 78 S. E. 244.

Of bank's officers, as to stock sold, admissible in suit by bank on note for price thereof. Brown Bank, 143/52, 84 S. E. 183.

In procuring note, admissibility of, as against purchaser. Heard, 113/162, 38 S. E. 387.

Reputation for good or bad character, how proved. Admissibility of positive and negative testimony as to. Testimony of, depending on knowledge of witness, when excluded. Powell, 101/10, 29 S. E. 309, 65 Am. St. R. 277.

Admissibility of; when corroboration required; and when overcome by proof of good character. Jones, 2 A.

433, 58 S. E. 559; McConnell, 2 A. 445, 58 S. E. 546.

As to sanity, admissibility of testimony as to. Goss, 14 A. 402, 81 S. E. 247.

For interfering, etc., that witness never heard of, when not admissible. Turner, 131/761, 63 S. E. 294.

For lewdness; when admissible. Flannagan, 22 A. 620, 97 S. E. 82.

General, what testimony of four witnesses was not evidence of. Benton, 132/11, 63 S. E. 626.

How proved. Moore, 128/96, 57 S. E. 110.

In community, admissibility of. Bush, 127/308, 56 S. E. 430, 9 Ann. Cas. 240.

In family not established by testimony derived from declaration of decedent not proved to be a member thereof. Mobley, 144/327, 87 S. E. 24.

Knowledge of hotel keeper, as to lewd practices in his hotel, inferable from reputation and other circumstances. Basil, 22 A. 765, 97 S. E. 259.

Not admissible to prove adultery. Bishop, 124/294, 52 S. E. 743. But when evidence of reputation of woman and of house was admissible on trial of man for adultery and fornication. Sutton, 124/815, 53 S. E. 381.

Of contractor for fair and honorable dealing, irrelevant to issue of compliance with contract. Cannon, 116/452, 42 S. E. 734.

Of hotel as gaming-house, admissibility of. Dudley, 18 A. 509, 89 S. E. 599.

Of house, as to lewdness, admissible in support of charge of maintaining lewd house. Ward, 22 A. 257, 95 S. E. 872.

Of renter, when presentment for keeping gaming-house is admissible to establish, and to put another on inquiry. Rivers, 118/42, 44 S. E. 859.

Of witness for veracity, questions as to, when not allowed. Barnwell, 105/399, 31 S. E. 116.

Over two years, before indictment, of person as a gambler and of apart-

ment as gaming-room, when admissible. Bashinski, 122/164, 50 S. E. 54.

Repute, as evidence of first marriage, in bigamy case. Oliver, 7 A. 698, 67 S. E. 886. General repute in neighborhood, admissible on issue of marriage. Drawdy, 130/161, 60 S. E. 451, 15 L. R. A. (N. S.) 190. Not admissible to prove possession of land. Luttrell, 121/699, 49 S. E. 691.

Showing that female witness was paramour of accused was not an effort to prove. Lundy, 144/833, 88 S. E. 209.

Testimony as to, not excluded on account of answers on cross-examination here. Fitzgerald, 10 A. 70, 72 S. E. 541.

Traditionary, not present day, when admissible. McAfee, 144/473, 87 S. E. 392.

Requisition, refusal to return before honoring of, when admissible as circumstance of guilt. Johnson, 120/135, 47 S. E. 510.

Rescission, not render contract inadmissible. Smith, 14 A. 320, 80 S. E. 700.

Inadmissible testimony as to. O'Brien, 14 A. 333, 80 S. E. 864.

Of sale, corroboration of testimony as to, by proof of worthlessness of property bought. Daniel, 16 A. 39, 84 S. E. 490.

Residence, circumstances showing place of. Hathaway, 14 A. 418, 81 S. E. 260.

Res inter alios acta, inadmissible. Folks, 135/180, 69 S. E. 24. When admissible. Wardlaw, 106/33, 31 S. E. 785; Chicago Building &c. Co., 139/816, 78 S. E. 244; Exchange Bank, 139/263, 77 S. E. 36, 51 L. R. A. (N. S.) 549.

Agreement of defendant and third person, of which plaintiff was informed. Bashinski, 133/39, 65 S. E. 152.

Transactions with others, afterward ratified, when not admissible. Ham, 2 A. 71, 58 S. E. 316. That witness bought like article at same time and place, paying one other than accused, when admissible. Whitfield, 2 A. 124, 126, 58 S. E. 385.

Transactions with others than party to cause, ordinarily irrelevant, may be

admissible as throwing light. *Noble*, 124/962, 53 S. E. 463.

Res ipsa loquitur, doctrine of. *City of Thomasville*, 17 A. 626, 627, 87 S. E. 923; *Sinkovitz*, 5 A. 788, 64 S. E. 93; *Williams*, 20 A. 780, 93 S. E. 555; *Payne*, 10 A. 762, 78 S. E. 1087.

Is a rule of circumstantial evidence. *Cochrell*, 5 A. 317, 322, 63 S. E. 244.

Whether applicable, a jury question. *Stamps*, 8 A. 230, 233, 68 S. E. 947.

Res judicata, evidence insufficient to support plea of. *Huntress*, 116/352, 42 S. E. 513.

Evidence supporting plea must appear to have been introduced. *Kelsoe*, 120/951, 957, 48 S. E. 366, 102 Am. St. R. 136.

Restriction of, to one purpose, when no cause for new trial. *Walker*, 137/398, 73 S. E. 368.

By charge of court, to purpose for which offered. *Cochran*, 113/737, 39 S. E. 337.

To disclaimer of guilt, error; accused had stated that shooting was an accident. *Boyd*, 136/340, 71 S. E. 416.

Riot, on trial for, evidence of title of accused to the premises, when not relevant. *Hunt*, 116/616, 42 S. E. 1004.

Declarations of persons in crowd, other than the accused, when admitted. *Green*, 109/544, 35 S. E. 97.

Road (public), admissibility of evidence to prove legal existence of. *Penick*, 131/385, 62 S. E. 300. See *McCoy*, 131/381, 62 S. E. 297.

Crossing signs, put up by railroad company; admissibility of testimony as to. *Atlantic Ry. Co.*, 125/457, 54 S. E. 622.

Relevant evidence of acceptance by county authorities, and of becoming public by prescription. *L. & N. R. Co.*, 135/67, 68 S. E. 805.

Repairs, mandamus requiring; admissibility of evidence on trial of issues of fact. *Commissioners*, 138/351, 75 S. E. 317.

Testimony of "outlet" at end of, may be contradicted. *McElwaney*, 131/98, 62 S. E. 20.

Rules of street-railroad, requiring motor-man to take certain precautions at stated places in passing other cars, admissible to show danger there. *Atlanta Con. St. Ry. Co.*, 103/333, 30 S. E. 41. Rule of railroad against running switch, irrelevant on trial of suit for injury by kicking car. *Ga. R. Co.*, 108/507, 34 S. E. 316.

Of employer, how proved. *Schaufele*, 6 A. 660, 65 S. E. 708.

Error in excluding, in suit of employee. *A. C. L. R. Co.*, 9 A. 13, 70 S. E. 214. Admissibility of rule as to employee's duty, as evidence against him, without first proving his knowledge of it. *Binion*, 111/878, 36 S. E. 938.

Of evidence, adjusted to laws of mind as well as law. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145. Legislative power to prescribe. *Jaques & Tinsley Co.*, 131/14, 62 S. E. 82; *Banks*, 124/15, 52 S. E. 74, 2 L. R. A. (N. S.) 1007.

Constitutionality of law prescribing. *Smith*, 141/482, 81 S. E. 220, Ann. Cas. 1915C, 999. In statute, how construed so as to harmonize with constitution. *Mulkey*, 1 A. 524, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284. By second section of labor-contract law of 1903, for punishment of fraud. *Wilson*, 138/489, 75 S. E. 619.

Rule of court as to insisting on all objections at once, discretion of court to relax. *Patton*, 124/965, 974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

Ruling out, affords no cause for complaint, when answer would be of no benefit to complaining party. *Brown*, 108/759, 33 S. E. 62. Ruling excluding, reversed later in trial, no ground for new trial. *Boyd*, 136/340, 71 S. E. 416.

Not incumbent on court without motion. *Hix*, 124/547, 52 S. E. 890. Motion to rule out may be made where evidence has been admitted without objection. *Patton*, 124/974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639; *Banks*, 124/15, 52 S. E.

74, 2 L. R. A. (N. S.) 1007. Exception to admission of evidence does not reach ruling on later motion to exclude it. *Daniel*, 124/1063, 53 S. E. 573.

No cause for complaint by party who has objected to. *Newman*, 134/137, 67 S. E. 662.

Rulings as to admissibility postponed, party desiring ruling should again call attention to the matter. *Whipple*, 123/581, 51 S. E. 590.

On admissibility of; judge's remark so treated. *Sims*, 144/90, 86 S. E. 230. See *Farrer*, 144/554, 87 S. E. 777.

In accordance with prior decision in same case, not error. *Austin*, 131/295, 62 S. E. 196; *Dolvin*, 131/300, 62 S. E. 198. Specific rulings as to, should be invoked, if necessary. *Sims*, 144/90, 86 S. E. 230.

Running away, circumstance tending to show guilt. *Gantz*, 18 A. 154, 88 S. E. 993.

Sale and installation of machinery, admissibility of evidence on trial of suit on. *Aripeka Saw Mills*, 143/210, 84 S. E. 455.

Of corporation's property, proof of authority to make. *Bridge*, 15 A. 291, 82 S. E. 925.

Competency of testimony of buyers' moral and financial standing, where dealer did not pass thereon. *American Chemical Co.*, 139/497, 77 S. E. 582.

Sanity, general reputation as to, admissible. *Goss*, 14 A. 402, 81 S. E. 247.

Satisfactory evidence; when contracting party not held to that which would satisfy a reasonable man. *Rome Ins. Co.*, 138/592, 75 S. E. 657.

Sayings and doings in suborning daughter, relevant on trial for suborning mother, as showing motive and scheme. *Stone*, 118/705, 45 S. E. 638, 98 Am. St. R. 145. Saying of accused, and offer of money, before deceased disappeared, when admissible. *Walker*, 141/525, 81 S. E. 442.

Schoolhouse, disturbance of assembly at, shown by proof of disturbing assembly

at bush arbor near the house. *McCrigh*, 110/261, 34 S. E. 368.

Scrivener not competent to testify to his own intention, or that of testator, in describing land. *Napier*, 137/242, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013.

Search or seizure illegal, admissibility of evidence obtained by. *Taylor*, 5 A. 243, 62 S. E. 1048; *Calhoun*, 144/679, 87 S. E. 893; *Warren*, 6 A. 18, 64 S. E. 111; *Martin*, 148/406, 96 S. E. 882; *Hysler*, 148/409, 96 S. E. 884; *Groce*, 148/520, 97 S. E. 525; *Brooks*, 19 A. 9, 90 S. E. 989. Search and seizure following illegal arrest of person, evidence procured by, not admissible. *Hughes*, 2 A. 29, 58 S. E. 390; *Gainer*, 2 A. 126, 58 S. E. 295; *Sherman*, 2 A. 148, 58 S. E. 393; *Hammock*, 1 A. 126, 58 S. E. 66.

Admissibility of testimony as to reason for. *Hall*, 22 A. 112, 95 S. E. 936.

Illegal, admissibility of evidence obtained by. *Young*, 12 A. 86, 76 S. E. 753; *Akridge*, 12 A. 252, 77 S. E. 101; *Harris*, 22 A. 795, 97 S. E. 894; *Stoker*, 23 A. 11, 97 S. E. 273; *Jackson*, 118/781, 45 S. E. 604; *Hornbuckle*, 18 A. 17, 88 S. E. 748; *Jones*, 21 A. 22, 93 S. E. 514; *Duren*, 21 A. 524, 525, 94 S. E. 902; *Underwood*, 13 A. 206, 78 S. E. 1103; *Holloway*, 16 A. 143, 84 S. E. 590; *Stephens*, 16 A. 144, 84 S. E. 560; *Heimer*, 16 A. 588, 85 S. E. 821. Rule as to, not violated. *Weatherington*, 13 A. 408, 79 S. E. 240. Objection too late after verdict. *Williams*, 7 A. 34, 65 S. E. 1097. Question as to admissibility submitted to jury. *Holloway*, 16 A. 143, 84 S. E. 590.

Of person, admissibility of evidence obtained by. *Byrd*, 10 A. 214, 73 S. E. 34. Conflict of decisions settled by answer of Supreme Court to certified questions of Court of Appeals. *Smith*, 17 A. 693, 88 S. E. 42; *Calhoun*, 17 A. 705, 88 S. E. 586. Of person under arrest, evidence procured by, when admitted. *Dozier*, 107/708, 33 S. E. 418; *Hill*, 8 A. 77, 68 S. E.

614. Of one illegally arrested. *Brookins*, 7 A. 204, 66 S. E. 398; *Jackson*, 7 A. 414, 66 S. E. 982.

Of premises, admissibility of evidence obtained by. *Craig*, 9 A. 233, 70 S. E. 974; *Duren*, 125/1, 53 S. E. 814. Search illegal, of premises, evidence obtained by, admitted. *Cohen*, 7 A. 5, 65 S. E. 1096; *Minor*, 7 A. 817, 68 S. E. 314; *Fanning*, 17 A. 316, 86 S. E. 731; *Lunceford*, 17 A. 415, 87 S. E. 151.

Seduction, admissibility of evidence as to, on trial of action for breach of promise of marriage. *Graves*, 123/224, 51 S. E. 318.

Admissibility of proof on trial for, that the female's mother was dead, and that a child was born. *Pike*, 121/60, 49 S. E. 680.

Admissibility of testimony on trial for. *Parker*, 11 A. 251, 252, 75 S. E. 437.

Evidence need not show definite date fixed for promised marriage. Testimony of promises repeated after offense accomplished, admissible. *Jinks*, 114/431, 40 S. E. 320.

Woman can testify that her love for accused induced her to yield to. *Washington*, 124/424, 52 S. E. 910.

Seizure of liquors, for use as evidence as to violation of law. *Jenkins*, 4 A. 864, 62 S. E. 574.

Separate prior transaction, testimony relating to, not admissible. *Happ Co.*, 145/837, 90 S. E. 61.

Separation, cause of, between deceased and his wife, when irrelevant on trial for murder. *Jackson*, 132/571, 64 S. E. 656.

Of relevant from irrelevant evidence, duty on party offering. *Ellis*, 109/422, 34 S. E. 567.

Servant employed by other company than defendant sued for killing him, admissible. *Ga. R. Co.*, 110/189, 35 S. E. 332.

Duty, testimony as to extent of, when not excluded on account of prescribed rule. *Central Ry. Co.*, 131/166, 62 S. E. 164.

Suing master for injury; irrelevant to show that he has wife and child. *Macon R. Co.*, 145/647, 89 S. E. 767.

Service, contradiction of sheriff's entry of, not allowed where sheriff not a party. *Parker*, 117/813, 45 S. E. 61.

Contradiction of return of, in defense to action on judgment rendered in other State. *Underwood*, 142/442, 83 S. E. 208, L. R. A. 1915B, 674.

In former suit, testimony denying, when not admissible. *Humphrey*, 142/292, 82 S. E. 885. See *Wincoff*, 142/552, 82 S. E. 1057.

Want of, and waiver thereof. *Kuhns*, 108/471, 34 S. E. 125.

Of notice shown by affidavit, denial of, in collateral proceeding. *Weekes*, 101/314, 28 S. E. 853.

Services, proof as to value of, or as to amount for which others offered to perform such services, properly excluded, in view of contract, etc. *Kelly*, 5 A. 619, 63 S. E. 639.

Value of, irrelevant where pleading confined to claim for breach of express contract. *Frierson*, 134/113, 67 S. E. 541.

Reasonable value of; what plaintiff charged another is not admissible. *Marshall*, 1 A. 485, 57 S. E. 1006.

Set-off not pleaded, but proved without objection; verdict allowing it was authorized. *Parsons*, 22 A. 279, 95 S. E. 1009.

Objections to testimony given to support plea of, sustained. *Gentry*, 146/14, 90 S. E. 277.

Plea necessary to require admission of testimony as to. *Walker*, 18 A. 447, 89 S. E. 533.

To note traded after maturity, not founded on mutual demand, but confined to contract sued on. *Polk*, 144/335, 87 S. E. 21.

Settlement, offer of, when inadmissible. *Jenkins*, 7 A. 484, 67 S. E. 124.

Offer to "call off the trade," admissible, in suit for breach of contract, when. *McIntosh*, 12 A. 305, 77 S. E. 6.

Of prosecution for rape desired, shown on cross-examination of the female. *Huff*, 106/432, 32 S. E. 348.

With third person, irrelevant in action for damages by personal injury. *Ga. Ry. Co.*, 122/550, 50 S. E. 478.

Sexual intercourse, acts of familiarity as tending to show, when not admissible. *Atlanta Con. St. Ry. Co.*, 107/12, 33 S. E. 191.

Admissibility of prior conduct as tending to show. *Lipham*, 125/52, 53 S. E. 817, 114 Am. St. R. 181, 4 Ann. Cas. 495.

Prior lascivious conduct between same parties, as tending to show. *Bass*, 103/227, 29 S. E. 966.

Birth of child, and efforts of alleged seducer to induce the taking of medicine to cause abortion, admissible as circumstance tending to show. *Parker*, 11 A. 252, 75 S. E. 437.

Proof of, by circumstantial evidence. *Johnson*, 119/447, 4 S. E. 634. Evidence of specific acts, not admitted for purpose of impeachment, when. *Black*, 119/747, 748, 47 S. E. 370.

With any other than the accused, witness may negative. *Taylor*, 110/151, 35 S. E. 161. Proof as to sexual relations, when admitted to show motive for procuring abortion. *Barrow*, 121/187, 48 S. E. 950. Circumstances here not admissible as tending to show. *Sasser*, 129/541, 59 S. E. 255.

Relevancy of testimony as to sexual perversity. *Frank*, 141/244, 80 S. E. 1016. Admissibility of testimony as to sexual immorality, where defense in homicide case was that it was committed to protect virtue of female. *Gossett*, 123/431, 51 S. E. 394.

Shipper suing carrier for breach of legal duty, evidence irrelevant that goods belonged to another. *Central Ry. Co.*, 116/863, 43 S. E. 265, 60 L. R. A. 817.

Shooting heard but not seen by witness, admissibility of testimony as to. *Crumbley*, 141/17, 80 S. E. 281.

Sickness, aggravation of, by tort; admissibility of evidence as to. *City of Moultrie*, 11 A. 649, 75 S. E. 991.

Sidewalk material, on issue of fitness of, relevant to prove subsequent washing V. II—46.

of hole under like conditions. *City of Columbus*, 120/786, 48 S. E. 318.

Signal-lights; testimony of insufficient number on prior occasion, when not 77 S. E. 790. Testimony of their meaning, when incompetent. *City of Dalton*, 139/557, 77 S. E. 790.

Signs; book explanation of their meaning, admissible to contradict testimony of different meaning. *Atl. R. Co.*, 132/189, 63 S. E. 834.

Size of bullet, admissibility of testimony as to. *Garner*, 6 A. 788, 65 S. E. 842.

Slandorous words, evidence as to who first communicated to plaintiff, immaterial on trial of action for slander. *Proctor*, 127/134, 56 S. E. 111. Witness may testify as to inferences drawn from. *Proctor*, 127/134, 56 S. E. 111.

Spoken after suit, to show malice. *Craven*, 101/845, 29 S. E. 152.

Testimony of general report in neighborhood admissible to mitigate damages, not to justify. *Bennett*, 1 A. 476, 58 S. E. 104.

Slightly material, no error in admitting. *Gorday*, 142/114, 82 S. E. 514.

Solvency or insolvency of debtor, range of evidence as to, how restricted. *Warren*, 145/503, 89 S. E. 520. Admissibility of testimony on issue as to. *Kirkman*, 145/452, 89 S. E. 411.

Of estate, admissibility of proof as to, where set-off pleaded to suit by administrator. *Bass*, 113/262, 38 S. E. 834.

Statements as to, in order to obtain credit, materiality of. *Cooley*, 111/443, 36 S. E. 786.

Specific performance of parol gift of land, admissibility of testimony on issue of fact as to. *Deal*, 147/523, 94 S. E. 1013.

Speculative intent in contract; admissibility of testimony as to. *Volunteer Ins. Co.*, 10 A. 255, 73 S. E. 602.

Speed, admissibility of testimony as to. *Lamb*, 20 A. 250, 92 S. E. 1011; *Ga. Ry. &c. Co.*, 20 A. 465, 466, 93 S. E.

62. Of automobile. Williams, 139/811, 78 S. E. 253.

Of train not greater than on former occasions, when not admissible to negative charge of negligence. Nashville Ry., 134/619, 68 S. E. 432.

Statement of accused jointly tried, testimony given by them not treated as such, but as evidence. Staten, 140/110, 78 S. E. 766.

Admissibility of testimony in rebuttal of; that person he accuses was elsewhere. Goolsby, 133/427, 66 S. E. 159.

Inadmissibility of testimony offered in corroboration of. Pride, 133/443, 66 S. E. 259.

On former trial, part offered by State, admissible, when accused given opportunity to introduce the whole. Smalls, 105/669, 31 S. E. 571.

On trial with codefendant, not avail the latter. Williams, 107/722, 33 S. E. 648.

Right of preference over evidence not to be curtailed. Rouse, 135/228, 69 S. E. 180.

Rules of evidence do not apply to. Richardson, 3 A. 313, 59 S. E. 916.

Testimony contradicting, admissible. Butler, 142/287, 82 S. E. 654.

When negative evidence not admissible in reply to. Turner, 131/761, 63 S. E. 924.

Statement of counsel in jury's presence, as to what he expects to prove by witness, when no ground for new trial. Corbitt, 7 A. 13, 66 S. E. 152.

Statistics, admissibility of testimony based on. W. U. Tel. Co., 10 A. 620, 74 S. E. 70.

Stenographer may be directed to read, to jury. Roberts, 104/806, 30 S. E. 966.

Duty of, to transcribe, in felony case, though punishment reduced to that of misdemeanor. Williams, 127/21, 55 S. E. 917; Rozar, 138/72, 74 S. E. 792.

Fee of, for transcript of evidence no part of costs in city court of Madison. Prepayment required. Bowles, 139/115, 76 S. E. 854.

Report of evidence by, how proved. Jones, 128/23, 57 S. E. 313. **Delay in furnishing, no excuse for delay in perfecting brief of evidence, when.** Dykes, 128/397, 57 S. E. 700.

Report of evidence by, as given at former trial, not admissible without proof of its genuineness and correctness. Barksdale, 120/388, 47 S. E. 943.

Report of evidence by official reporter, no abuse of discretion in refusing to require. Peoples, 143/384, 85 S. E. 119.

Stockholder, evidence admissible to contradict answer as to when defendant ceased to be. Fouché, 110/827, 36 S. E. 256.

Street-car, means of stopping, etc., relevant testimony as to. Atlanta Ry. Co., 118/449, 45 S. E. 494.

Street or sidewalk, acceptance of land for, how proved. Mayor &c. of Americus, 2 A. 378, 58 S. E. 518.

Establishment of, how shown. Lovett, 13 A. 72, 78 S. E. 857.

Evidence illustrating city's recognition of, admissible in contest between it and landowner. Ga. R. Co., 134/871, 68 S. E. 703.

Striking out testimony, where examination not concluded, when does not result. Gale, 135/353, 69 S. E. 537.

Structural defects in car, testimony illustrating, held not irrelevant. Macos &c. R. Co., 140/531, 79 S. E. 153.

Suborn, effort to, inadmissible unless relating to case on trial. Fuller, 106/256, 33 S. E. 865.

Subpoena duces tecum, liability of agent of carrier's receiver to respond to. Blitch, 145/882, 90 S. E. 42.

Sufficiency of, immaterial, where the papers called for were introduced. Sizer, 129/151, 58 S. E. 1055.

Want of, no reason for excluding paper in court. Manning, 136/881, 72 S. E. 401.

Subsequent difficulty irrelevant on issue arising from main transaction. City Electric Ry. Co., 101/34, 28 S. E. 508. **Subsequent occurrence of like character at place of injury, when relevant on issue**

of negligence. *City of Columbus*, 120/797, 48 S. E. 318.

Success in business, when not relevant to question as to character. *Savannah Elec. Co.*, 6 A. 374, 65 S. E. 50.

Summing up, for jury, not judge. *Waters*, 3 A. 649, 60 S. E. 335.

Supplemental certification of. Act of 1905 must be followed. *Maloy*, 134/433, 68 S. E. 80.

Suppression of evidence, agreement for purpose of. *Bailey*, 123/656, 51 S. E. 603, 107 Am. St. R. 153.

Against policy of law. Promise, on consideration of agreement to keep silence, not enforced. *Lazenby*, 132/836, 65 S. E. 120.

Effort to suppress, when admissible. *Taylor*, 135/622, 70 S. E. 237.

Suretyship of apparent maker of note, that payee took it without knowledge of, admissible for what purpose. *Hall*, 114/357, 40 S. E. 250.

Proof of, after judgment; competency of movant as witness, and effect as to estate of deceased surety. *Chamblee*, 101/790, 29 S. E. 20.

Proof of, not allowed, defendant entitled to new trial, though creditor thereby delayed. *Whitley*, 114/669, 40 S. E. 838.

Several contemporaneous writings shown to be part of one transaction. *Buck*, 104/660, 30 S. E. 872.

Surprise of party by, no ground for new trial, when. *McBride*, 125/516, 54 S. E. 674.

Surrender of self after homicide, not admissible save in explanation or rebuttal. *Jones*, 132/340, 63 S. E. 1114.

Suspend trial to enable litigant to procure additional, court is not bound to. *Boswell*, 131/311, 62 S. E. 187; *Zipperer*, 128/135, 57 S. E. 311.

Tax on occupation, circumstances considered in determining as to reasonableness of. *Postal Tel. Co.*, 141/658, 82 S. E. 26.

Return, admissibility of testimony of property included in. *Jasper County*, 147/675, 95 S. E. 254. Material to show omission to include land party

now claims. *Tanner*, 147/176, 92 S. E. 1005.

Telegraphic message, testimony to show meaning of, when admitted. *Western Union Tel. Co.*, 114/581, 40 S. E. 815, 88 Am. St. R. 36.

Cipher-code words in; admissibility of testimony as to meaning. *Allen*, 129/751, 59 S. E. 813.

Telephonic communication, proof of. *Stamps*, 8 A. 506, 70 S. E. 81.

Identity of person receiving, not shown, contract not proved. *Planters Cotton Oil Co.*, 126/621, 55 S. E. 495, 6 L. R. A. (N. S.) 1180.

With one whose voice was not recognized, error in admitting. *Stewart*, 18 A. 519, 89 S. E. 1502.

Tenancy or no tenancy, evidence admissible on issue of. *Bennett*, 126/228, 54 S. E. 942.

Tender and proposition to rescind being in, explanatory testimony received in rebuttal. *Henson*, 108/567, 33 S. E. 911.

Admissibility of testimony as to, where no plea of tender. *Ford*, 133/238, 65 S. E. 444; *Langdale*, 139/324, 77 S. E. 172.

Testamentary capacity, admissibility and sufficiency of testimony as to. *McFarland*, 144/63, 86 S. E. 227; *Whiddon*, 144/77, 86 S. E. 243. Must affirmatively appear; factum of will and presumption of sanity insufficient. *Penn*, 144/67, 86 S. E. 233; *Bullock*, 144/731, 87 S. E. 1058. See *Shewmake*, 144/801, 821, 87 S. E. 1046. Relevancy on issue of. *Gordon*, 141/347, 80 S. E. 1007.

Tests and experiments, discretion in admitting testimony as to, not abused. *Carolina Cement Co.*, 9 A. 556, 71 S. E. 942.

Admissibility of testimony of. As to ability to see an object within a given distance. *Atlanta R. Co.*, 2 A. 352, 58 S. E. 500. As to quality of article sold. *DeLoach Mill Co.*, 2 A. 493, 58 S. E. 790.

As to identity of a substance, proof of. *Standard Oil Co.*, 15 A. 571, 84 S. E. 69.

As to whether certain oil was kerosene, admissibility of. *Standard Oil Co.*, 15 A. 571, 84 S. E. 69.

"Think;" "I think," used by witness, treated as meaning recollect. *Matthews*, 19 A. 489, 91, S. E. 914.

Third person's liability, evidence as to, admitted, to show that defendant was not liable. *Smith*, 119/98, 45 S. E. 963.

Threat, admissibility of evidence as to. *Harris*, 17 A. 723, 88 S. E. 121; *Early*, 14 A. 467, 81 S. E. 385.

Against father of person slain, when admissible on trial for murder. *Rawlins*, 124/57, 52 S. E. 1.

Conditional, admissibility of. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; *Brooks*, 134/784, 68 S. E. 504.

In conditional form, when admissible as tending to show malice. *Golatt*, 130/18, 60 S. E. 107.

Admissibility of defendant's conversation in connection with, relating to prior difficulty. *Worthan*, 141/307, 30 S. E. 1001.

By accused against deceased, admissibility of, in determining identity of accused with slayer. *Taylor*, 135/622, 70 S. E. 237.

By mother of accused, not in his presence, not admissible. *Owens*, 118/753, 45 S. E. 598.

Communicated, evidence of, admissible. *Taylor*, 131/769, 63 S. E. 296.

Facts tending to weaken the probative force of. *Justice*, 6 A. 330, 64 S. E. 1004.

Generally immaterial, how communicated, if known to the threatened person. *Thurman*, 14 A. 543, 81 S. E. 796.

Jury not to be advised to use "great caution" in receiving evidence of. *Perdue*, 126/112, 54 S. E. 820.

Of accused was not admissible as explanatory of his daughter's conduct or silence. *Moose*, 145/363, 89 S. E. 335.

Of decedent, admissibility of, in homicide case. *Miller*, 9 A. 599, 603, 71 S. E. 1021.

Of party, as reason for not previously disclosing facts elicited on cross-

examination; witness allowed to testify to. *Sasser*, 129/541, 59 S. E. 255.

Spoken nine days before homicide, admissibility of testimony as to. *Cason*, 148/477, 97 S. E. 74.

To kill, admissibility of testimony as to. *Helms*, 138/826, 76 S. E. 353; *Brown*, 141/6, 80 S. E. 320; *Coleman*, 141/736, 82 S. E. 228. How considered by jury. *Chancey*, 141/54, 80 S. E. 287; *Humphrey*, 141/671, 81 S. E. 1034.

To kill someone, when admissible. *Hixon*, 130/479, 61 S. E. 14. Words spoken shortly before homicide, and capable of being construed as a threat against some one, admitted. *Harris*, 109/280, 34 S. E. 583.

To take life, admissibility of declaration by accused as tending to show. *Hill*, 148/521, 97 S. E. 442.

Uncommunicated, admissibility of. *Rouse*, 135/228, 69 S. E. 180; *Helms*, 136/801, 72 S. E. 246; *Cargill*, 12 A. 574, 77 S. E. 832; *McKinney*, 119/467, 46 S. E. 719. Not admissible. *Nix*, 120/162, 47 S. E. 516.

Uncommunicated, by deceased toward defendant, when admissible on trial of action for damages. *Darby*, 144/759, 87 S. E. 1067.

Uncommunicated, rejected; it not appearing that deceased was assailant, save by statement of accused. *Pride*, 133/438, 66 S. E. 259.

Timber cutting on part of tract other than that in dispute, admissibility of testimony as to. *Baker*, 136/542, 71 S. E. 871.

Time; clerical error in recital in record of deed; as to date of levy; correct date shown by testimony of sheriff. *Hopson*, 22 A. 392, 95 S. E. 1015.

Day mentioned without year, treated as referring to year obviously intended. *Swift*, 8 A. 545, 70 S. E. 97.

Elapsing between offense and arrest, materiality of. *Clark*, 126/79, 54 S. E. 808.

Month mentioned in testimony, without year, will be understood to be of the current year, unless from the connection it appears that another was in-

tended. **Tipton**, 119/304, 46 S. E. 436; **Jordan**, 119/443, 46 S. E. 679.

Of act in question, admissibility of testimony that it was when a certain other event occurred. **Fleming**, 125/17, 53 S. E. 579.

Of offense, "during the Christmas holidays," not sufficiently certain that it was after enactment of law. **Battle**, 118/242, 44 S. E. 994.

Of offense on trial, proof essential as to. **Askew**, 3 A. 79, 59 S. E. 311.

Reasonableness of delay, admissibility of testimony as to. **Smith**, 20 A. 313, 93 S. E. 74.

What reasonable, for transportation; admissibility of testimony as to. **Southern Ry. Co.**, 18 A. 767, 90 S. E. 656.

Title and right of possession must appear in each person named in joint demise in ejectment. **Deubler**, 139/773, 78 S. E. 176.

By gift, or by grant; marriage (undivorced) of witness to grantor was irrelevant to issue. **Hudson**, 147/547, 94 S. E. 1007.

Acquired by plaintiff after commencement of suit, competency of evidence showing. **City of Atlanta**, 137/495, 496, 73 S. E. 736.

Acquired by plaintiff pending action, in lieu of lost muniment, when not admissible. **Lee**, 138/646, 75 S. E. 1051.

Admissibility of claim of, interposed in other proceeding; for what purpose received. **Mays**, 134/870, 68 S. E. 738.

Evidence as to, admitted to show good faith in using force necessary to prevent trespass. **Zoucks**, 19 A. 744, 92 S. E. 228.

Evidence corroborative of claimant's testimony as to. **Rives**, 17 A. 496, 87 S. E. 764.

Forged, when shown without plea of non est factum. **Citizens Bank**, 10 A. 703, 74 S. E. 303.

In common grantor, unnecessary to prove. **Walker**, 139/520, 77 S. E. 580.

In widow of intestate not proved by agreement of heirs. **Ala. R. Co.**, 112/62, 37 S. E. 91.

Of intestate, proof of, where plaintiff claims under administrator's deed; when rule was applied. **Wall**, 138/347, 75 S. E. 253.

Outstanding, evidence of, in defense against ejectment or trespass, with dispute as to boundary. **O'Neal**, 148/62, 95 S. E. 709. See **Title**.

Prescriptive, what evidence of continuous possession required to support. **Walker**, 139/521, 77 S. E. 580.

Testimony as to ownership of grantee, not admitted. **Collinsville Co.**, 123/832, 51 S. E. 666.

Testimony that the witness "found the property was in [defendant's] name," rejected. **Cornelia Planing Mill Co.**, 129/524, 59 S. E. 223.

To land; not competent to ask witness to state, if he knows, where it is. **Tillman**, 134/661, 68 S. E. 504. Declaration illustrating claimant's holding as security only. **Wadsworth**, 134/816, 68 S. E. 649.

Tracing lost property, admissibility of information obtained in course of. **Abercrombie**, 130/680, 61 S. E. 532.

Tracks, as circumstance tending to show guilt. **Lawson**, 21 A. 140, 94 S. E. 52; **Green**, 111/140, 36 S. E. 609; **Young**, 121/336, 49 S. E. 256; **Park**, 121/164, 51 S. E. 317; **Williams**, 123/278, 51 S. E. 344; **Whipple**, 123/580, 51 S. E. 590.

Comparison by forcibly placing prisoner's foot in. **Underwood**, 13 A. 210, 78 S. E. 1103.

Conduct of dogs in following. **Aiken**, 17 A. 722, 88 S. E. 210; **Harris**, 17 A. 723, 88 S. E. 121; **Fite**, 16 A. 22, 84 S. E. 485; **Aiken**, 16 A. 848, 86 S. E. 1076.

Admissible testimony relating to. **Jackson**, 148/519, 97 S. E. 525.

Identification by. **Patton**, 117/230, 235, 43 S. E. 533.

Of persons jointly accused, admissibility of testimony as to, on separate trial of either. **Thomas**, 143/268, 84 S. E. 587.

Testimony of conformability of defendant's feet to, not admissible if procured by coercion. **Elder**, 143/363, 85 S. E. 97.

- That accused was forced to make track, when no error not to exclude. *Dunwoody*, 118/308, 45 S. E. 412.
- Trade meaning of term used in contract may be proved. *Stewart*, 118/541, 45 S. E. 398.
- Trains moving, that witness had seen persons enter and leave, irrelevant. *Southern Ry. Co.*, 137/670, 74 S. E. 268.
- Trees, proof of value of. *Tallulah Falls Ry. Co.*, 20 A. 356, 93 S. E. 161.
- Trespass; admissibility of acts and sayings of one of two joint defendants after unlawful entry. *Sheftall*, 133/488, 66 S.E. 253, 27 L. R. A. (N. S.) 442.
- Amount received by defendant in, for use of property while in plaintiff's possession. irrelevant. *Henson*, 108/567, 33 S. E. 911.
- By cutting timber, irrelevancy of testimony as to. *Gress*, 139/795, 78 S. E. 120.
- Negated by grantor's testimony that he had made a deed to defendant. *Gaston*, 120/519, 48 S. E. 188.
- Trust implied, evidence admissible to show facts constituting. *Lawson*, 146/421, 91 S. E. 469.
- Non-acceptance of, how shown. *Ayer*, 146/608, 610, 91 S. E. 548.
- Uncertainty of recollection, as affecting denial of positive testimony. *Pendergrast*, 6 A. 47, 64 S. E. 282.
- Of evidence not required exclusion, when. *O'Brien*, 14 A. 333, 80 S. E. 864.
- Unchaste character relevant, on trial for rape, not only as affecting credibility, but as bearing on whether woman consented to sexual intercourse. *Seals*, 114/518, 40 S. E. 731, 88 Am. St. R. 31.
- Undue influence, expressed intention of grantor and testator, as to disposition of his property, relevant on issue of. So, testimony of valuable services by sole legatee, and of testator's promise to compensate therefor by leaving her all his property. *Cato*, 112/139, 37 S. E. 183.
- Upon testator, relevancy of testimony on issue of. *Gordon*, 141/348, 80 S. E. 1007.
- What testimony not admissible to show. *Jeter*, 135/22, 68 S. E. 787.
- Unlawfully obtained, not inadmissible. *Brooks*, 19 A. 9, 90 S. E. 989.
- "Unnecessary," effect of objection that testimony admitted was. *Howard*, 18 A. 6, 89 S. E. 443.
- Usage, when not admissible to affect right's under bill of lading. *W. & A. R. Co.*, 107/517, 38 S. E. 821.
- Usury in deed given to secure debt; competency of testimony relating to transaction between the parties. *McConnell*, 146/475, 91 S. E. 550.
- Intent to take, shown by circumstances. *Furr*, 3 A. 188, 59 S. E. 596.
- Security deed void for, shown in reply to plea that fire insurance was avoided by change of title. *Athens Insurance Co.*, 136/585, 71 S. E. 892.
- Testimony competent on issue of, that part of money was received on independent claim and not as interest on loan. *Patton*, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.
- Vagrancy, what evidence immaterial to charge of. *Hawks*, 3 A. 447, 60 S. E. 207.
- Value. Admissibility of market price. *Parker*, 22 A. 731, 97 S. E. 260.
- Admissibility of testimony as to noise, smoke, etc., from trains, as affecting value of land. *Atlantic R. Co.*, 125/329, 54 S. E. 148.
- Admissibility of testimony as to probable enhancement of value of land, if certain improvements had been made. *Reidsville &c. R. Co.*, 13 A. 358, 366, 79 S. E. 187.
- Allowance of proof of, before proof of prima facie liability, is the reverse of proper order; but not cause for new trial. *Jackson*, 132/56, 63 S. E. 823.
- Amount of wages is a circumstance tending to show value of services. *W. & A. R. Co.*, 15 A. 370, 83 S. E. 445.
- As affected by change of street grade; admissibility of testimony as to sale of other property. *City of Columbus*, 117/823, 45 S. E. 59.

Value—(Continued).

At a certain time, when not shown by proof of value before that time. *Oxford*, 117/817, 45 S. E. 67.

Evidence as to value, irrelevant, where amount was fixed by contract. *Moore*, 13 A. 392, 79 S. E. 246; *Walker*, 21 A. 568, 94 S. E. 835. When shown by agreed price in contract of sale. *Carter*, 23 A. 423, 98 S. E. 365; *Lott*, 21 A. 249, 94 S. E. 322.

Not shown by price in contract, where the suit was not between parties to the contract. *Gamble*, 22 A. 611, 96 S. E. 705.

Direction of verdict, against testimony that article was of no value. *Carter*, 23 A. 422, 98 S. E. 365.

Proof of, necessary, though defendant's pleas were stricken. *Jones*, 23 A. 706, 99 S. E. 237.

Before and after date of misrepresentations as to; admissibility of evidence in prosecution for cheating and swindling. *Whitaker*, 12 A. 209, 75 S. E. 258.

Compensation fixed by law, for conducting sheriff's sale, not relevant on issue as to reasonable value of services in conducting auction as individual. *Boyd Co.*, 20 A. 620, 93 S. E. 261.

Evidence of original cost as bearing on issue as to. *Hutcherson*, 142/262, 82 S. E. 643; *Great American Fire Assn.*, 11 A. 785, 787, 76 S. E. 153. Opinions of witnesses as to value do bind jury. *Ib.*

Of life, how shown. *Standard Oil Co.*, 15 A. 572, 589, 600, 84 S. E. 69.

Cost of transportation may be shown as element of, when. *Elbert County*, 16 A. 834, 838, 86 S. E. 651.

Depreciation in; admissibility of evidence as to rental value and cost of repairs. *City of Macon*, 113/1112, 39 S. E. 446.

Depreciation in rental value, admissibility of evidence as to. *Savannah R. Co.*, 117/893, 45 S. E. 280.

Effect of testimony of one sued for price of article, that it was "of no value," to him. *Thompson*, 9 A. 594, 71 S. E. 1024.

Value—(Continued).

Enhancement of; what testimony excluded. *City of Atlanta*, 142/324, 82 S. E. 899.

Evidence as to poisoning of stock by water impregnated with sewage, admitted, as tending to show deterioration of value of land. *City of Sandersville*, 10 A. 361, 73 S. E. 535.

Evidence tending to show decrease of market value of land, as result of operation of railroad. *Chattahoochee Valley Ry. Co.*, 9 A. 83, 70 S. E. 688.

Experiments to determine as to value; admissibility of testimony as to. *Carolina Cement Co.*, 9 A. 556, 558, 71 S. E. 942.

Fact that goods had value, shown by fact that they had been sold, though price or quantity not proved. *Tolver*, 10 A. 33, 72 S. E. 516; *Greenfield*, 14 A. 603, 81 S. E. 814.

Harmless rulings on admissibility of testimony as to. *A. C. L. Ry. Co.*, 18 A. 674, 676, 90 S. E. 288.

How proved. *Crump*, 18 A. 437, 89 S. E. 586.

Inadmissible testimony as to what a certain place of business would have been worth to plaintiffs if they had not been evicted, and as to what they ought to have made there. *Copeland*, 21 A. 486, 94 S. E. 633.

Liberality allowed in admission of testimony as to. *Morrow Transfer Co.*, 8 A. 406, 69 S. E. 317. Value of services, evidence affording basis for determining. *A. C. L. R. A. Co.*, 8 A. 44, 68 S. E. 743.

May be shown by direct or circumstantial evidence, or both. *Atlantic R. Co.*, 1 A. 667, 57 S. E. 1030.

Not proved, conviction of larceny set aside. *Williams*, 11 A. 766, 76 S. E. 72.

Not proved, no reason for granting new trial, in absence of assignment of error as to lack of evidence. *Ga., Fla. & Ala. Ry. Co.*, 10 A. 38, 72 S. E. 511.

Of abutting land before and after change of street grade, admissibility of testimony as to. *Smith*, 22 A. 511, 96 S. E. 334.

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Of advancement, rule for estimating. *Ireland*, 133/854, 67 S. E. 195, 26 L. R. A. (N. S.) 1050, 18 Ann. Cas. 544.

Of board and services, offer of other person was irrelevant on issue as to. *Ware*, 141/410, 81 S. E. 118.

Of domestic services of wife, direct or express evidence of, not required in suit for damages based on. *W. & A. R. Co.*, 22 A. 314, 96 S. E. 17.

Of estate, admission of testimony as to, when no cause for new trial. *Russell*, 136/136, 70 S. E. 1018.

Of estate left by testatrix, and of personal property not disposed of by will, when admissible. *Whiddon*, 144/77, 86 S. E. 243.

Of dog, how shown. *Columbus R. Co.*, 128/631, 58 S. E. 152, 10 L. R. A. (N. S.) 1136, 119 Am. St. R. 404.

Of husband's property, competent on inquiry of his ability to pay alimony. *Siniard*, 145/541, 89 S. E. 517.

Of land sold at sheriff's sale cannot be shown by testimony as to what similar land brought at tax sale. *Stark*, 127/107, 56 S. E. 130.

Of land taken and injured by condemnation, admissibility of testimony as to. General estimate of damages, when not receivable. *Central Georgia Power Co.*, 143/10, 84 S. E. 67.

Of national bank bill proved by its own production and identification. *Joiner*, 124/102, 52 S. E. 151.

Of cow stolen must be proved, for conviction of larceny. *Portwood*, 124/783, 53 S. E. 99.

Of property, admissibility of evidence as to, in suit to set aside transfer as fraudulent. *Hunt*, 128/416, 57 S. E. 489.

Of property at a given date, not shown by evidence of what it brought at public sale several years after. *First State Bank*, 111/877, 36 S. E. 960.

Of property, investigation of, in making a sufficient bond by guardian. *Sturtevant*, 133/568, 65 S. E. 890.

Of property, relevancy of testimony as to, on issue of solvency of grantor

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in deed. *Kirkman*, 145/452, 89 S. E. 411.

Of property, what owner would take for it irrelevant on issue as to. *Conant*, 120/568, 48 S. E. 234.

Of rent cotton not proved, verdict for land against tenant unsupported. *Stanley*, 140/751, 79 S. E. 842.

Of services (of attorney), admissible testimony as to. *Smith*, 19 A. 369, 91 S. E. 578.

Of services, salary paid by former employer not relevant to issue in suit for breach of contract of employment. *Stone Mountain Granite Corporation*, 19 A. 269, 91 S. E. 286.

Of stock killed, price at which other stock was sold, irrelevant to issue. *W. & A. R. Co.*, 104/384, 30 S. E. 868.

Of stolen coins, inferable by jury. *Ector*, 120/543, 48 S. E. 315.

Of timber cut, testimony too indefinite as to. *Hardwood Mfg. Co.*, 126/55, 54 S. E. 814.

Presumed not to have changed after date proved. *Southern Express Co.*, 1 A. 301, 57 S. E. 1066.

Price paid, as tending to show value. *Peterson*, 6 A. 491, 65 S. E. 311; *Atlanta Baggage Co.*, 4 A. 407, 61 S. E. 844.

Proof as to; when should show market value, not what worth to party for particular purpose. *Acme Brewing Co.*, 115/495, 502, 42 S. E. 8.

Proof not limited to price on a particular day. *Peninsular Naval Stores Co.*, 20 A. 501, 504, 505, 93 S. E. 159.

Proof of, in larceny case. *Peterson*, 6 A. 491, 65 S. E. 311; *Wright*, 1 A. 158, 57 S. E. 1050.

Proof of, in trover case. *Elder*, 9 A. 484, 486, 71 S. E. 806; *Moats*, 17 A. 778, 88 S. E. 685; *Peeples*, 14 A. 5, 30 S. E. 21.

When need not be proved in trover. *Gordon*, 7 A. 354, 356, 66 S. E. 988.

Rental value admitted, to illustrate market value of land. *Central Ry. Co.*, 7 A. 464, 67 S. E. 118.

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Proof of market value. *Peninsular Naval Stores Co.*, 20 A. 501, 504, 505, 93 S. E. 159.

Proof of market value at one place, as tending to show market value at another place. *Frost*, 10 A. 96, 72 S. E. 719.

Proof of market value at place at which there was no market. *Twin City Lumber Co.*, 22 A. 578, 96 S. E. 437.

Proved by testimony that the property was worth the price alleged in the petition (price "charged" treated as meaning price alleged, here). *S. A. L. Ry.*, 12 A. 206, 77 S. E. 12.

Rebuttal of testimony as to worthlessness, by proof of purchase, acceptance, and payment for goods of same quality. *Corona Coal Co.*, 7 A. 483, 67 S. E. 203.

Recitals of forthcoming bond as to, estopped maker. *Jones*, 19 A. 705, 91 S. E. 1061.

Services of attorney, jury's right to use their "own knowledge and ideas" as to value of. *Patterson*, 15 A. 683, 684, 84 S. E. 163.

Statement of total value of stock of goods, not too indefinite as basis for recovery. *Atkinson*, 11 A. 526, 75 S. E. 835.

Tax returns relevant. *Southern Ry. Co.*, 560, 30 S. E. 795.

Testimony that property was obtained by gift, not relevant on issue as to its value. *Elbert County*, 16 A. 835, 86 S. E. 651.

Uncontradicted statement of witness as to, need not be accepted by jury as correct. *Georgia Northern Ry. Co.*, 22 A. 665, 97 S. E. 94; *Haverty Furniture Co.*, 15 A. 620, 622, 84 S. E. 138.

When admissible to show price contracted for was reasonable. *White*, 105/30, 31 S. E. 119.

When necessary to prove market value at time and place for delivery. *Sizer*, 129/144, 151, 58 S. E. 1055.

Venue, effect of change of, as to jurisdiction. *Johnston*, 118/310, 45 S. E. 381; 46 S. E. 488.

At K's house on L's place in Franklin county, implies Georgia, not North Carolina. *Knox*, 114/272, 40 S. E. 233. **Not proved: 35 or 40 feet from house in the county.** *Green*, 110/270, 34 S. E. 563. **No proof of, in brief of evidence, new trial results.** *Clark*, 110/911, 36 S. E. 297.

Of larceny. *Morton*, 118/306, 45 S. E. 395. **Forgery.** *Long*, 118/319, 45 S. E. 416.

Of murder, testimony insufficient to prove. *Holden*, 144/338, 87 S. E. 27.

Proof of, must appear. Brief of evidence can not be cured in Supreme Court. *Smith*, 118/84, 44 S. E. 827.

Voice, identification by. *Patton*, 117/230, 235, 43 S. E. 533.

Voluntary statement by witness not excluded, if responsive to question of objecting counsel. *Knight*, 148/40, 95 S. E. 679.

Voluntary testimony of party rendered it not error to admit testimony of his attorney to same fact. *Becker*, 120/1003, 48 S. E. 408.

Wages, as evidence of value of services. *W. & A. R. Co.*, 15 A. 370, 83 S. E. 445.

Waiver, absence of; necessity of showing this affirmatively. *Warwick*, 143/503, 511, 85 S. E. 700.

Rule of court as to when must be in writing. *Johnstone*, 8 A. 809, 70 S. E. 180.

By omission to object, on motion to allow jury to inspect premises in question. *Linder*, 137/352, 73 S. E. 734.

Of illegal character of evidence, by failure to object at trial. *Davis*, 4 A. 318, 61 S. E. 404; *Cooley*, 3 A. 496, 60 S. E. 220.

Of objection, by cross-examination, and not moving to exclude. *Pines*, 15 A. 348, 83 S. E. 198.

Of objection, by failure to repeat it when the evidence objected to is substantially repeated. *Harrison*, 125/267, 53 S. E. 958.

Of objection to, by not giving specific reason against, when offered. *Andrews*, 113/1, 43 S. E. 852.

Waiver—(Continued).

Of objection to want of preliminary proof as foundation. Motion to rule out, not sustained. *Patton*, 124/974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639. Of auditor's taking oath before beginning hearing. *McConnell*, 124/1038, 53 S. E. 638.

Did not result from letter promising first payment on receipt of goods. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

By silence. *Northington*, 118/586, 45 S. E. 447.

Inaction or not suing is not conclusive evidence of. *Wilkes*, 138/408, 75 S. E. 353.

Includes idea of intent, express or implied. *Alabama Construction Co.*, 131/371, 62 S. E. 160.

Not alleged in petition, but performance alleged, evidence of waiver immaterial. *McLeod*, 8 A. 765, 70 S. E. 157.

Of damages for delay evidenced, not by mere acceptance, but by new agreement fully executed. *Poland Co.*, 118/460, 45 S. E. 374.

Warrant not exhibited to accused who killed officer attempting arrest was admissible as tending to show he was fugitive from justice. *Harper*, 129/772, 59 S. E. 792.

Warrantor of title afterward acquired undivided interest at instance of warrantee, not admissible where no pleading to reform deed. *Oliver*, 141/126, 80 S. E. 630.

Warranty by agent, additional to that specified in written contract of sale, when not admissible. *McCormick*, 116/445, 42 S. E. 778.

Excluded by terms of writing can not be proved. *Holt & Duggan Co.*, 146/46, 90 S. E. 381.

Express, and failure of consideration; evidence of defects in goods sold, when admissible. *Burr*, 2 A. 52, 8 S. E. 373.

Made by parol contemporaneously with purchase-money note, proof of, not allowed. *Fleming*, 4 A. 351, 61 S. E. 518. See *Stimpson Scale Co.*, 4 A. 567, 61 S. E. 1131.

Express, in parol, as to capacity of machinery, not heard in defense to suit on notes for price of it. *Lunsford*, 101/41, 28 S. E. 496.

Waste, motive of person committing, his testimony competent as to, when. *Roby*, 121/686, 49 S. E. 694, 68 L. R. A. 601.

Water right, issue of invading; illustrated by testimony that defendant operated more machinery than capacity of stream would properly serve. *Price*, 132/246, 64 S. E. 87, 22 L. R. A. (N. S.) 684.

Wealth of defendant, harmless error in excluding proof as to. *Binder*, 13 A. 384, 79 S. E. 216.

Weapons concealed, habit of deceased to carry, not admissible on trial for his homicide, where no evidence that accused knew of it. *Futch*, 137/75, 72 S. E. 911. Rock as deadly weapon, when death results from throwing of. *Boone*, 145/37, 88 S. E. 558. Brass knucks not so held as matter of law. *Tanner*, 145/72, 88 S. E. 554.

Weights, inadmissible testimony as to. *Central of Ga. Ry. Co.*, 23 A. 396, 98 S. E. 357.

Will, factum of; competency of testimony by other than subscribing witnesses. *Brock*, 140/590, 79 S. E. 473.

Intention to revoke, testimony as to, rejected. *Howard*, 115/357, 41 S. E. 638, 90 Am. St. R. 121.

Nuncupative, proof of. *Smith*, 115/287, 41 S. E. 621.

Nuncupative, proved by legatees without voiding legacies; aliter as to written will. *Smith*, 112/905, 38 S. E. 110.

Partly canceled or mutilated; admissibility of evidence to show words cut therefrom. *Hartz*, 136/565, 71 S. E. 995, 38 L. R. A. (N. S.) 797, 25 Ann. Cas. 165.

Revocation of, how shown. *Howard*, 115/357, 41 S. E. 638, 90 Am. St. R. 121.

Seeking to revoke a prior deed of the testator, not admissible. *Griffith*, 120/582, 48 S. E. 129.

Wish expressed by State's witness, that accused be not hurt, irrelevant, where

no foundation to impeach. **Glover**, 137/82, 72 S. E. 926.

Withdrawal of evidence by court cured error in admitting. **Robinson**, 22 A. 25, 95 S. E. 324; **Hall**, 22 A. 113, 95 S. E. 936; **Wyatt**, 18 A. 29, 88 S. E. 718.

By party introducing, when not allowed. **Zipperer**, 128/135, 57 S. E. 311; **Freney**, 129/760, 59 S. E. 783.

In instruction which stated a prejudicial fact. **Phillips**, 18 A. 109, 88 S. E. 905.

In order to exclude testimony introduced in reply to, when not allowed. **Sweeney**, 121/294, 48 S. E. 984.

Of irrelevant testimony, after rebutting testimony was introduced; discretion of court as to allowing. **Andrews**, 15 A. 103, 82 S. E. 636.

Over objection of adverse party, when not allowed. **Alabama Railroad Co.**, 131/238, 62 S. E. 71.

Rests in court's discretion; not a matter of right. **Humphreys**, 133/456, 458, 66 S. E. 158.

When not cure error in admitting. **Thompson**, 12 A. 202, 76 S. E. 1072.

Where admitted over objection, allowable. **Alabama Railroad Co.**, 131/241, 62 S. E. 71.

Words, uncertainty as to, no ground for excluding testimony as to what was said. **Holcombe**, 5 A. 54, 62 S. E. 647.

Work, mode of, as tending to show incompetency. **Merchants & Miners Trans. Co.**, 4 A. 655, 663, 62 S. E. 130.

Wordly circumstances inadmissible, when. **Savannah Elec. Co.**, 6 A. 374, 65 S. E. 50.

Writing ambiguous; question whether ambiguous was for court, not witness. **Elliott**, 113/301, 38 S. E. 821.

Contents of, knowledge of witness as to, as test of temper, credibility, etc. **Kearney**, 101/803, 29 S. E. 127, 65 Am. St. R. 344.

Genuineness of, admissibility of evidence attacking, without a plea on

oath, or affidavit of forgery. **Anderson**, 103/767, 30 S. E. 244. Written contract not signed, admissibility of evidence of assent to. **Kidd**, 105/209, 31 S. E. 430.

Refreshing memory by, in testifying. **Sizer**, 129/151, 58 S. E. 1055. Used to refresh recollection of witness, need not be his own. **Shrouder**, 121/616, 49 S. E. 702.

Writ of error, legal modes of presenting evidence on. **Dolvin**, 134/113, 67 S. E. 541; **Maloy**, 134/433, 434, 68 S. E. 80.

2. ADMISSIONS, CONFESSIONS, AND DECLARATIONS.

Accident without negligence, effect of admission of; no release or discharge from liability. **L. & N. R. Co.**, 135/522, 69 S. E. 870. Admission of injured employee, of accident rather than negligence, received against his widow in suit for his homicide. **Ga. R. Co.**, 108/507, 34 S. E. 316.

Accomplice, admission by. **Barrow**, 121/187, 48 S. E. 950; **Harrell**, 121/607, 49 S. E. 703. Declarations of, when admitted. **Barrow**, 121/187, 48 S. E. 950; **Harrell**, 121/607, 49 S. E. 703. See **Evidence**, 1, catchword, "Accomplice."

Account sued on; irrelevant testimony of plaintiff's declaration that he had his accounts insured, that suit was matter of form, etc. **General Supply Co.**, 138/219, 75 S. E. 135.

Admission of correctness of statement of, when not made by acceptance and retention of check. **Robinson**, 120/901, 48 S. E. 380.

Admission by entry of approval on. **Walker**, 6 A. 61, 64 S. E. 310. By failure to object to account. **Borders**, 6 A. 735, 65 S. E. 788.

Admission as to correctness of, acts amounting to. **Kelley**, 113/365, 38 S. E. 839.

Accused, admission by, whether admissibility governed by principle applied

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to confessions. **Fuller**, 109/809, 811, 35 S. E. 298.

Act or declaration of, not amounting to confession or incriminatory statement. **Goolsby**, 133/427, 66 S. E. 159.

Admission by, to officer, when not excluded. **Fuller**, 109/809, 35 S. E. 298.

Admissions of, to establish bigamy. **Murphy**, 122/149, 50 S. E. 48. **Murder**. **Davis**, 122/564, 50 S. E. 376. Flight (after lapse of time) by one accused of gaming. **Grant**, 122/742, 50 S. E. 946.

Admission of, at coroner's inquest, voluntarily made, not open to objection. **Groce**, 148/520, 97 S. E. 525.

Declaration, admissibility of. **Graham**, 125/48, 53 S. E. 816.

Declarations of, after act charged, when inadmissible. **Park**, 126/576, 55 S. E. 489; **Shuler**, 126/630, 55 S. E. 496.

Declarations and conduct of, in his own favor, after the alleged crime, generally not admissible; exception to this rule. **McCullough**, 11 A. 612, 73 S. E. 393.

Declaration in presence of, admissibility of. **Gates**, 20 A. 172, 92 S. E. 974; **Thurman**, 14 A. 543, 81 S. E. 796.

Declaration in presence of, that he was the slayer, when admissible. **Watson**, 136/236, 71 S. E. 122.

Declaration of, after greasing a pistol, "that he was going to get him a man," admissible. **Crumbley**, 141/17, 80 S. E. 281. As to intent to commit crime, admissibility of. **Strickland**, 12 A. 640, 77 S. E. 1070.

Declarations of, as to condition of woman involved in act with which he is charged, admissible. **Taylor**, 110/151, 35 S. E. 161.

Declarations by, of innocence not admissible in his favor. **Kennedy**, 101/559, 28 S. E. 979.

Declarations of, before trial, not admissible in his behalf. **Barnes**, 3 A. 333, 59 S. E. 937.

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Declaration of, "I could kill him" name not overheard, when admissible. **Butler**, 142/287, 82 S. E. 654.

Declaration of, made in a half-minute after killing, when not admissible as *res gestæ*. **Thornton**, 107/683, 33 S. E. 673.

Declarations of, not as admissions or confessions, but as showing guilty knowledge. **Shaw**, 102/660, 29 S. E. 477.

Declaration of, not communicated to deceased, when admissible. **McCray**, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; **Brooks**, 134/784, 68 S. E. 504.

Declaration of, not in accord with his statement at the trial, admissibility of testimony as to. **Coleman**, 141/732, 82 S. E. 228.

Declarations of, shortly after making assault, admitted, to show animus. **Davis**, 11 A. 804, 76 S. E. 391.

Declaration of, that he alone committed the offense, inadmissible for one indicted jointly and tried several. **Robinson**, 114/445, 40 S. E. 253.

Declaration of, that he had "traded the mule," admitted on issue as to fraudulent sale. **Richter**, 4 A. 274, 61 S. E. 147.

Declaration of, that he would not live with prosecutor, irrelevant on trial for enticing servant away. **Broughton**, 114/34, 39 S. E. 866.

Acquiescence by acts or declarations, effect of, as to boundary line. **Ivey**, 124/159, 52 S. E. 436, 110 Am. St. R. 160. What knowledge to be proved. **Brantley**, 143/73, 84 S. E. 434.

By conduct for less than seven years, does not establish boundary between adjoining lands. **McAleer**, 146/369, 91 S. E. 114.

By failing to deny. **Dudley**, 18 A. 509, 89 S. E. 599.

By silence. **Improved Fertilizer Co.**, 15 A. 611, 84 S. E. 132.

In partition of land, and erection of improvements on faith of waiver, admissible. **Crumley**, 141/603, 81 S. E. 871.

In arbitration and award among devisees, admissibility of deeds to show. **Murrelle**, 142/41, 82 S. E. 456.

Non-action as showing ratification, where deed taken in name of wrong person. **Jones**, 103/183, 29 S. E. 298.

Admission by, when circumstances call for denial or other conduct. **Thomas**, 143/268, 270, 84 S. E. 587.

Acts, declarations accompanying, when not received. **Sullivan**, 101/800, 29 S. E. 16.

Administration, admissions in application for. **Waller**, 22 A. 477, 478, 96 S. E. 333.

Administrator, admissions by, in application to sell land and in tax returns, admissible against estate. **Horkan**, 111/126, 36 S. E. 432.

Since deceased, declarations of, when admissible against his surety. **American Surety Co.**, 2 A. 645, 58 S. E. 1116.

Advertisement of land by, for sale, containing vague description, when not received as admission. **Whitehead**, 127/774, 56 S. E. 1004.

Effect of inventory of, as evidence; admissibility of testimony as to return filed and withdrawn. **Wood**, 121/471, 49 S. E. 295.

Advancement to child, declaration of father that property he conveyed to himself as guardian was in part intended as, excluded. **Miller**, 105/306, 31 S. E. 186. Declarations of sick father, when not admissible on question whether previous deed of gift was intended as advancement. **Howard**, 101/224, 28 S. E. 648.

Affection for third person, declaration of, not admitted. **McWhorter**, 123/251, 51 S. E. 288.

Affidavit made on mistaken theory not treated as an admission. **Mackenzie**, 132/324, 63 S. E. 900, 16 Ann. Cas. 723.

Agent, declarations of, not admissible to prove agency. **Alger**, 105/178, 31 S. E. 423; **Wynne**, 101/808, 28 S. E. 1000; **Johnson County Bank**, 9 A. 463, 71 S. E. 757; **Almand**, 113/984, 39 S.

E. 421; **Herrington**, 6 A. 861, 65 S. E. 1064; **Amicalola Co.**, 111/872, 36 S. E. 950; **Patrick**, 122/80, 49 S. E. 806; **Brooke**, 122/359, 50 S. E. 146; **Hood**, 122/795, 50 S. E. 994; **Franklin L. Co.**, 133/557, 66 S. E. 264; **Becker**, 133/864, 867, 67 S. E. 92; **Southern Ry. Co.**, 136/303, 71 S. E. 422; **Fowler**, 138/786, 76 S. E. 85; **Hall**, 142/335, 83 S. E. 92; **Robertson**, 147/329, 93 S. E. 895; **Michigan Mutual Ins. Co.**, 10 A. 697, 73 S. E. 1096; **Carter**, 11 A. 479, 75 S. E. 824; **Rome Ins. Co.**, 11 A. 539, 75 S. E. 894; **Caldwell**, 16 A. 611, 85 S. E. 934; **Baker**, 18 A. 611, 90 S. E. 171; **Napier**, 19 A. 409, 91 S. E. 579; **Americus Oil Co.**, 114/624, 40 S. E. 780; **Campbell**, 20 A. 38, 92 S. E. 545; **Taylor**, 21 A. 40, 93 S. E. 558; **Sherrod**, 21 A. 200, 93 S. E. 1009; **Weiner**, 139/596, 77 S. E. 811. Error in admitting such declarations was immaterial, in view of facts stated by the witness, authorizing the conclusion that the declarant was agent. **Rome Ins. Co.**, 11 A. 539, 75 S. E. 894. Declaration that declarant was superintendent and represented defendant, not admissible. **Georgia Steel Co.**, 136/492, 71 S. E. 890.

Shipping agent of railroad company, sayings of, as to delivery of goods at destination, when not admissible. **Southern R. Co.**, 103/186, 29 S. E. 816.

May testify that he acted as agent. **Great Southern Accident Co.**, 13 A. 292, 79 S. E. 162; **Friese**, 15 A. 786, 84 S. E. 219. May testify to his agency. As to business transacted, when declarations admitted. **Harris Co.**, 110/302, 34 S. E. 1003; **Grand R. Co.**, 110/321, 35 S. E. 312; **Jones**, 110/373, 35 S. E. 690; **Armour**, 110/403, 35 S. E. 787; **Massillon Co.**, 110/570, 35 S. E. 635.

Letter-head and signing as agent, agency not proved by. **Michigan Mutual Ins. Co.**, 10 A. 697, 73 S. E. 1096.

Declarations, admissibility of. **Suttles**, 117/215, 43 S. E. 486; **A. C. L. R. Co.**, 21 A. 455, 94 S. E. 584; **Camilla Cotton Oil Co.**, 21 A. 603,

Agent—(Continued).

94 S. E. 855; **Citizens Bank**, 15 A. 815, 84 S. E. 232; **Southern Ry. Co.**, 115/635, 42 S. E. 15; **Southern Express Co.**, 13 A. 175, 78 S. E. 1111; **C. & W. C. Ry. Co.**, 13 A. 748, 750, 79 S. E. 932; **Smith**, 13 A. 839, 80 S. E. 1051; **Weiner**, 139/596, 77 S. E. 811; **Sweeney**, 119/76, 81, 46 S. E. 76, 100 Am. St. R. 159. When not admissible to prove that he acted within the scope of his authority. **Thomas**, 119/780, 47 S. E. 177.

Admissions of, not received before his agency and authority appear. **National Bank**, 142/663, 83 S. E. 526, L. R. A. 1915B, 1116.

Admission of liability by, not received when his authority does not appear. **Mitchell Auto Co.**, 143/516, 85 S. E. 635.

Conduct or declaration of, not received as admission unless made as part of the negotiation, etc. **Gainesville Ry.**, 1 A. 635, 57 S. E. 1007.

Sayings of, not admissible until agency has been proved. **Howell**, 127/574, 56 S. E. 771; **Crankshaw**, 1 A. 364, 58 S. E. 222; **Bernstein**, 1 A. 445, 57 S. E. 1017. Do not bind principal, unless part of *res gestæ*. **Ga. Ry. Co.**, 1 A. 714, 57 S. E. 1076; **Johnson**, 1 A. 840, 57 S. E. 1078.

Declaration of, not appearing to have been made while engaged in business of the principal, not admissible. **Lott**, 21 A. 247, 94 S. E. 322.

Declaration of, outside scope of agency, not admissible against principal. **S. A. L. Ry. Co.**, 4 A. 7, 60 S. E. 868. See **Monahan**, 4 A. 684, 62 S. E. 127; **Central Railway Co.**, 133/393, 65 S. E. 855.

Declaration of, in absence of principal and not in scope of agency, do not bind principal. **People's Bank**, 114/603, 40 S. E. 717.

Declarations after termination of agency, not admitted. **Atlanta Savings Bank**, 107/630, 33 S. E. 878.

Admission of, when binds principal. **Cable Co.**, 127/65, 56 S. E. 108; **Sweeney**, 117/76, 81 S. E. 76, 100 Am.

Agent—(Continued).

St. R. 159; **White Sewing Machine Co.**, 7 A. 283, 66 S. E. 811; **National Asso.**, 120/358, 47 S. E. 962. When not admissible. **Sizer**, 129/148, 58 S. E. 1055.

Admission of, as to service of process, admissible. **Albany &c. Ry. Co.**, 8 A. 174, 68 S. E. 868.

Admission of facts tending to prove agency; railroad way-bills admissible in connection with proof that accused paid freight and received goods. **Laps**, 120/139, 47 S. E. 572.

C. C. § 3606 construed, as to declarations of deceased agents; did not change prior law. 56 Ga. 638, not followed. **Turner**, 123/5, 50 S. E. 969, 107 Am. St. R. 76.

Declaration of, agency not provable by; admissibility of negotiations with, before proof of agency. **Indiana Fruit Co.**, 125/223, 54 S. E. 65.

Declarations of, when disregarded, as hearsay, in reviewing case. **Miller**, 126/746, 55 S. E. 952.

Letters tending to show that the addressee was agent for the writer, admitted. **Columbus Show Case Co.**, 128/488, 57 S. E. 871.

Declaration *dum fervet opus*, admissibility of. **Rogers**, 144/390, 87 S. E. 397; **Farmers Ginney Co.**, 144/599, 87 S. E. 804. Irrelevant unless connection with declarant's conduct shown. **Gress**, 139/795, 78 S. E. 120. Statement of city clerk to inquirer not admitted as. **Sterling**, 137/177, 73 S. E. 374.

Admission of (medical examiner of insurer), within scope of agency, admissibility of. **Torbert**, 141/773, 82 S. E. 134.

Declaration of, as to title, principal was not bound by. **Wall**, 143/417, 35 S. E. 325.

Declaration of claim of title, and of intent to take possession, when admissible. **Gray Co.**, 127/693, 56 S. E. 252.

Admission of was evidence against himself, not his principal. **Kolman**, 2 A. 648, 58 S. E. 1070.

Admissibility of declarations of, to corroborate or impeach; not to prove agency. *Ham*, 2 A. 71, 58 S. E. 313; *Davidson*, 2 A. 432, 58 S. E. 687, 688.

Proof of agency by admission of alleged principal. *Bazemore*, 9 A. 29, 70 S. E. 261.

Declaration of, to prove agency of another, when not admissible. *Steinhauer*, 20 A. 734, 93 S. E. 280.

Circumstances showing authority. *Taylor*, 21 A. 40, 93 S. E. 588; *Sherrod*, 21 A. 200, 93 S. E. 1009.

Admission by, no less evidence against principal than if made by principal, when. *William Hester Marble Co.*, 22 A. 433, 96 S. E. 269.

Ambiguous declaration; whether it amounted to admission, was for jury, under proper instruction. *Allred*, 126/537, 55 S. E. 178.

Amendment to answer rejected, admission in, is admissible for plaintiff, though discovery waived. *Norris*, 138/711, 76 S. E. 60.

Animus, admissibility of declarations of person killed to show. *Miller*, 9 A. 599, 71 S. E. 1021.

Declarations of accused, as evidence of. *Davis*, 11 A. 804, 76 S. E. 391.

Another person, declaration of, that he committed the crime, not admissible in favor of accused on trial. *Beach*, 138/265, 75 S. E. 139.

Answer, admission in, not determined without a copy for inspection. *Beck*, 112/683, 37 S. E. 983.

Stricken, admission in, as evidence. *Armuchee Pants Mfg. Co.*, 14 A. 141, 80 S. E. 525.

Evasive, to petition, treated as admission. *Jones*, 7 A. 540, 67 S. E. 280.

Ante litem motam declaration, admissibility of, in contrast to declaration in view of litigation. *Mobley*, 144/327, 87 S. E. 24. See *Estill*, 149/384, 100 S. E. 365.

Architect, declaration of, that contract was completed, when not admissible against party to building contract. *Mal-lard*, 105/401, 31 S. E. 45.

Arrest, though accused under at the time, confession admissible, if voluntary. *Brown*, 3 A. 479, 60 S. E. 216; *Folds*, 123/169, 51 S. E. 305; *Jenkins*, 119/431, 46 S. E. 628.

Assignor, declaration or admission by, made after parting with title, not affect assignee's right. *National Bank*, 110/693, 36 S. E. 265.

Assume admission, when not made, error to. *Cooper*, 2 A. 730, 59 S. E. 20.

Attorney, admission of, when not received to bind client. *Cable Co.*, 118/913, 45 S. E. 787.

Admissions to, by former client, admissibility of. *Philman*, 103/82, 29 S. E. 598.

Admission to, in anticipation of employment, not received. *Haywood*, 114/111, 39 S. E. 948.

Bad faith in obtaining admission, no ground for excluding. *Sanders*, 113/269, 38 S. E. 841.

Bona fides, declarations of one at whose instance deed attacked was made, as showing. *Cohen*, 105/339, 31 S. E. 205.

Admission of indebtedness to wife by husband, when admissible to show consideration of deed to her, attacked by creditor. *Hayes*, 105/299, 31 S. E. 166.

Boundary of land conveyed; admissibility of testimony as to agreement and practical location. *Parrish*, 142/115, 82 S. E. 520. See *Haley*, 142/390, 82 S. E. 1058.

Unascertained or disputed, when established by oral declarations or by acquiescence. *Gornto*, 141/598, 81 S. E. 860.

Burden of proof, admission as affecting. *Hunter*, 113/140, 38 S. E. 406; *Phoenix Ins. Co.*, 113/424, 433, 38 S. E. 992; *Melton*, 113/603, 38 S. E. 958; *Brunswick R. Co.*, 113/842, 39 S. E. 551, 61 L. R. A. 13.

Bystander, declaration of, and of accused, just after shooting, when admissible. *Fuller*, 127/47, 55 S. E. 1047.

Carrier's receipt of goods in apparent good order, admission by. *Kavanaugh*,

120/63, 47 S. E. 526, 1 Ann. Cas. 705.

Charge on confession not given, where confession not proved. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17; **Davis**, 114/109, 39 S. E. 906; **Cleveland**, 114/110, 39 S. E. 941.

Proper instructions as to admissions. **McBride**, 125/515, 54 S. E. 674.

Admission implied by court in, error here. **Young**, 125/587, 54 S. E. 82.

On confessions, admission did not authorize. **Smith**, 115/586, 41 S. E. 984.

Circumstances of declarations, admissible to apply them to subject-matter. **Godley**, 132/514, 64 S. E. 546.

Claimant, explanation of admission by, not only admissible but necessary, not to controvert it, but to show possession of defendant consistent with claimant's title. **People's Bank**, 114/603, 40 S. E. 717.

Admission by, that defendant in execution was in possession, effect of. **Manley**, 128/350, 57 S. E. 705.

Admission by defendant in execution, against his interest, made before litigation, admissible in claim case. **Rountree**, 128/737, 58 S. E. 346.

Admission by giving claim bond, is merely that the property has been levied on. **Luke**, 4 A. 545, 62 S. E. 110.

Codefendant, declarations of, in favor of accused on trial, not admissible. **Bell**, 21 A. 788, 95 S. E. 270.

Common grantor, competency of admission in other case to show that parties to ejectment claim under. **McTyer**, 142/852, 83 S. E. 955.

Declaration of, to plaintiff, not in presence of defendant, not admissible. **Howell**, 139/442, 77 S. E. 564.

Communicated to opposing party, admission which was not, may be proved. **Austin**, 1 A. 258, 57 S. E. 964.

Complaints of customers admissible, on issue as to goods purchased. **White Crown Fruit Jar Co.**, 19 A. 196, 91 S. E. 245.

Compromise and settlement, when evidence of prior negotiations not objectionable as propositions of. **Piedmont Mills**, 131/137, 62 S. E. 52.

Admissibility of statements made with a view of. **Luke**, 13 A. 36, 37, 78 S. E. 778.

Evidence of, why excluded. Applies to settlement between defendant and third person. **Ga. Ry. Co.**, 122/547, 50 S. E. 478.

Offer, inadmissible testimony as to. **Jenkins**, 7 A. 848, 489, 67 S. E. 124; **Barber**, 13 A. 171, 78 S. E. 1100.

Offer of less sum in, not admissible. **Dance**, 134/646, 68 S. E. 434. Offer of employment not made as. **Holland**, 134/679, 8 S. E. 555, 19 Ann. Cas. 1032.

Offer relates to disputed, not admitted liability. **Teasley**, 120/373, 47 S. E. 925.

Testimony as to offer to give note in settlement of claim, not subject to the objection that it related to a proposed compromise. **Thompson**, 18 A. 765, 90 S. E. 729.

Testimony here not objectionable as mere proposal of. **Gaston**, 9 A. 824, 72 S. E. 285.

Admissions during negotiations for, rejected. **Wall**, 125/121, 53 S. E. 591.

Admission of liability, coupled with offer to settle for less sum, not excluded as offer of. **Teasley**, 120/373, 47 S. E. 925. Whether making partial payments, was subject to explanation. **Hawkins**, 120/617, 48 S. E. 169.

Rule as to admission with view to, when not applied to offer to "call off trade." **McIntosh**, 12 A. 305, 77 S. E. 6. Rule excluding, not applied to statement here. **Wilson**, 23 A. 30, 97 S. E. 447.

Admission followed by offer to, but not shown to have been made with a view to compromise, admissible. **McBride**, 125/515, 54 S. E. 674.

Conduct explained by proof of declarations. **Coppedge**, 22 A. 631, 96 S. E. 1046.

Consideration of note sued on, admission touching illegality of, what admissible to show. *Exchange Bank*, 139/268, 77 S. E. 36, 51 L. R. A. (N. S.) 549.

Conspirator, admissibility of declaration of. *Suttles*, 117/215, 43 S. E. 486; *Coppedge*, 22 A. 631, 96 S. E. 1046; *Slaughter*, 113/284, 38 S. E. 854, 34 Am. St. R. 242. Declarations of one, made pending the enterprise, admissible against the others. *Smith*, 148/332, 96 S. E. 632; cf. *Almand*, 148/369, 96 S. E. 962; *Gunter*, 19 A. 772, 92 S. E. 314.

Constructions, admission capable of two. *Monroe County*, 3 A. 585, 60 S. E. 293.

Contract, admission as to effect of, by one party, when avails the other, and when not. *McElmurray*, 120/16, 47 S. E. 531. Admission that a contract was made, when treated as meaning a valid, properly executed contract. *Early County*, 4 A. 268, 63 S. E. 353. Declaration of one defendant to alleged contract, when not received against the other. *Becker*, 133/864, 67 S. E. 92.

Contradictory of approved declaration of the same person, admissibility of declaration which is. *Pyle*, 4 A. 811, 816, 62 S. E. 540. Declaration contradictory of testimony of declarant, admissibility of. *Bates*, 4 A. 486, 61 S. E. 888.

Conviction, admissions not sufficient, with other evidence in this case, to sustain. *Boatwright*, 103/431, 30 S. E. 256. Admission of former conviction of crime, when competent. *Folks*, 135/179, 69 S. E. 24.

Coroner's inquest, confession elicited at, from witness in custody under charge of having killed the deceased, held inadmissible on his trial. *Adams*, 129/248, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158.

Corporation, act of officer of, as admission. *McGregor*, 128/585, 58 S. E. 28, 13 L. R. A. (N. S.) 185.

Declarations of officer of, as to his authority, admissibility of. *Dawson Paper Shell Pecan Co.*, 19 A. 43, 90 S. E. 984.

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Declarations of officer of, as to what took place at meeting of trustees of, when inadmissible. *Childs*, 117/554, 43 S. E. 986.

Admission of president of, not receivable to bind it by prior contract. *Happ Co.*, 145/837, 90 S. E. 61.

Admission of officer of, did not bind. *Sizer*, 129/148, 58 S. E. 1055.

Admission binding on, director or officer not authorized to make. *Farmers Ginnery Co.*, 144/599, 87 S. E. 804.

Corpus delicti not established by extrajudicial confessions of accused. *Williams*, 125/741, 54 S. E. 661; *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33.

Corroboration of confession. *Joiner*, 119/315, 46 S. E. 412. Rule as to. *Cochran*, 113/726, 39 S. E. 332. Necessity and sufficiency. *Brown*, 141/5, 80 S. E. 320; *Chancey*, 141/54, 80 S. E. 287. Sufficiency of. *Dotson*, 136/244, 71 S. E. 164; *Smith*, 125/298, 54 S. E. 127; *Wimberly*, 105/188, 31 S. E. 162; *Brown*, 105/645, 31 S. E. 557.

Of confession implicating accused as accessory to homicide; evidence sufficient. *Bivins*, 147/229, 93 S. E. 213.

Confession without, no basis of conviction. Aliunde proof of corpus delicti will serve as corroboration. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33; *Sanders*, 118/329, 45 S. E. 365; *Rucker*, 2 A. 140, 58 S. E. 295; *McAllister*, 2 A. 654, 58 S. E. 1110. By proof of corpus delicti. The two considered in connection. *Wilburn*, 141/510, 81 S. E. 444; *Morgan*, 120/499, 48 S. E. 238. By proof of corpus delicti and other evidence. *Hugle*, 147/35, 92 S. E. 646. Confession, and corroboration thereof, as basis of conviction of crime. *Cargile*, 136/55, 70 S. E. 873.

Criminal admission; when admissible. Whether free and voluntary, for jury. *Dixon*, 116/186, 42 S. E. 357. Of homicide, on trial for murder. *Somers*, 116/535, 42 S. E. 779.

Cross-examination, admission on, when excluded on ground of better evidence. *Bowling*, 142/397, 83 S. E. 112.

Damages, extent of; declarations of injured party admissible for defendant. *Ingram*, 108/194, 33 S. E. 961.

Debtor, declaration of, made to creditor, that he had made certain misrepresentations to obtain credit, admissible on trial of issue as to whether his return of goods was an illegal preference. *Silvey*, 123/814, 51 S. E. 748, 1 L. R. A. (N. S.) 386.

Deceased grantor, declarations of, when admissible. *Shackelford*, 135/30, 68 S. E. 838. When not admissible in favor of grantee. *Hollis*, 103/75, 29 S. E. 482. Admissibility of, on issue as to delivery of deed. *Chambers*, 113/344, 38 S. E. 848.

Deceased mortgagor, declaration of, competency of plaintiff in execution to testify as to. *Thornton*, 133/825, 67 S. E. 97, 134 Am. St. R. 226.

Decedent, declarations of, when not admissible. *Cole*, 125/276, 53 S. E. 958. Admissibility of. *Turner*, 123/5, 6, 50 S. E. 969, 107 Am. St. R. 76; *Murdock*, 12 A. 276, 77 S. E. 181; *Drawdy*, 130/161, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Declarations of, just before fatal rencounter, near enough to be heard by his slayer, and indicating a pacific mental attitude toward him, admitted as part of *res gestæ* in homicide case. *Hightower*, 9 A. 236, 70 S. E. 1022.

Declaration of, against interest, not with view to pending litigation, admissible. *Chandler*, 131/82, 61 S. E. 1036.

Declaration of, that he expected to be killed by accused, not admissible. *Tiget*, 110/244, 34 S. E. 1023.

Declaration of peaceful intent, admitted in rebuttal of evidence of his previous threats. *Taylor*, 121/348, 49 S. E. 303.

Declarations of, not communicated to accused, inadmissible. *Perry*, 102/368, 30 S. E. 903.

Declaration of, not admissible to show that his intention in seeking accused, was peaceable. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Declarations of, as to cause of death and who killed him, when admissible. *Parks*, 105/242, 31 S. E. 580.

Declaration by, recently before homicide, admitted over objection as indefinite and remote. *Smith*, 148/467, 96 S. E. 1042.

Declaration by, having means of knowing reputation of ancient boundaries, when admissible. *McAfee*, 144/473, 87 S. E. 392.

Declaration by, as to matters of pedigree, what necessary to render admissible. *Mobley*, 144/327, 87 S. E. 24; *Lanier*, 123/633, 51 S. E. 632.

Declaration of, as to relationship, admissibility of. *Malone*, 113/791, 39 S. E. 507, 84 Am. St. R. 259. Declarations of decedents were not admissible to prove the relationship averred and to be proved. *Terry*, 142/224, 82 S. E. 566.

Admission of, as to indebtedness; admissibility of. *Parker*, 22 A. 730, 97 S. E. 260.

Incompetency of witnesses to prove admission of. *Western Lodge*, 101/62, 28 S. E. 494.

Non-admissibility of letter containing declarations by, in his favor. *Birmingham & Atlantic R. Co.*, 101/183, 28 S. E. 534.

Deed, declarations of maker of, on issue whether deed was fraudulent. *Ernest*, 107/61, 32 S. E. 898.

Defendant in *fi. fa.*, declarations of, after levy, not admissible. *Walton*, 11 A. 159, 74 S. E. 1006. As to ownership of property levied on, when not admissible in claim case; conflict in decisions. *Smith*, 13 A. 837, 80 S. E. 1051. As to title of property involved in claim case, when claimant not bound by. *Cronan*, 107/296, 33 S. E. 56. In claim case, when admissible. *Smiley*, 123/39, 50 S. E. 927.

Definition of confession. Admission of act, coupled with legal excuse, no confession. *Owens*, 120/296, 48 S. E. 21.

Degree and weight of admissions; charge approved. *Raleigh R. Co.*, 106/572, 32 S. E. 622.

Desire to plead guilty, confession by expressing. *Abrams*, 121/170, 172, 48 S. E. 965.

Direct, confession classed as, not circumstantial. *Wilburn*, 141/510, 81 S. E. 444.

Distinction between, and definition of, admission and confession. *Riley*, 1 A. 651, 57 S. E. 1031; *Suddeth*, 112/407, 37 S. E. 747. Whether admission amounts to confession. *Weaver*, 135/321, 69 S. E. 488. See *Mize*, 135/295, 69 S. E. 173.

Donor, admissibility and effect of declarations of. *Culpepper*, 18 A. 183, 89 S. E. 161.

Dying declaration, expression of opinion or belief not admitted as. *Kearney*, 101/803, 29 S. E. 127; *Sweat*, 107/712, 33 S. E. 422; *Ogletree*, 115/835, 42 S. E. 255.

That the accused shot without cause, not objectionable as stating a conclusion. *McMillan*, 128/25, 57 S. E. 309.

Written, part not admissible as such, harmless error in not excluding. *Perry*, 102/368, 30 S. E. 903.

Written by hand of another than deceased, when admissible. *Perry*, 102/368, 30 S. E. 903. Testimony as to, not excluded because another had committed the statement to writing. *Mixon*, 7 A. 805, 808, 68 S. E. 315. Written report of, not highest evidence. *Ib.* 809. Reduced to writing, but not signed, when admissible. *Freeman*, 112/48, 37 S. E. 172.

Admissibility of. *McArthur*, 120/195, 47 S. E. 553; *Davis*, 120/843, 49 S. E. 305; *Harris*, 142/627, 83 S. E. 514; *Park*, 126/575, 55 S. E. 489; *Anderson*, 117/255, 43 S. E. 835; *Washington*, 137/218, 73 S. E. 512; *Josey*, 137/769, 772, 74 S. E. 282; *Perdue*, 135/278, 69 S. E. 184.

Subject to attack by proof of general bad character. *Perry*, 102/368, 30 S. E. 903.

Foundation for, presumed laid. *Mayes*, 108/787, 33 S. E. 811. Sufficient foundation for admitting. *Gibbons*, 137/786, 74 S. E. 549. Judge passes on sufficiency of foundation for admitting. *Smith*, 110/255, 34 S. E. 204.

Preliminary proof of, for court; but not conclusive on jury, etc. *Smith*, 118/61, 44 S. E. 817. Sufficient to authorize admission of. *Grant*, 118/804, 45 S. E. 603.

What admissible as. *Bush*, 109/123, 34 S. E. 298.

Not incompetent because physician told declarant there was a chance for him to recover. *Wheeler*, 112/43, 37 S. E. 126.

Admissible, though no proof that declarant said he was dying. *Young*, 114/849, 40 S. E. 1000.

Evidence sufficient to show *prima facie* that the declarant was in articulo mortis and conscious of his condition; submitted to jury with proper instruction. *Anderson*, 117/255, 43 S. E. 835.

Not free from suspicion of device or afterthought, inadmissible. So of declarations by one of two persons shot, offered on trial of slayer for killing the other. *Taylor*, 120/857, 48 S. E. 361.

By one not shown to have been conscious of his condition, inadmissible. *Sutherland*, 121/191, 48 S. E. 915.

Admitted on *prima facie* showing. Whether declarant conscious of his condition, etc., issues of fact. *Anderson*, 122/161, 50 S. E. 46; *Findley*, 125/579, 54 S. E. 106; *Williams*, 148/483, 97 S. E. 77.

How considered. *Hall*, 124/649, 52 S. E. 891.

Whether declarant's statement, that "he never expected to get up," meant he realized he was dying, was a question for the jury. *Bird*, 128/254, 57 S. E. 320.

Prima facie showing for admission of. *McMillan*, 128/25, 57 S. E. 309; *Bird*, 128/254, 57 S. E. 320.

Dying declaration—(Continued).

Proper instruction to jury on. **Harper**, 129/770, 59 S. E. 792; **Oliver**, 129/777, 59 S. E. 900.

Legal effect of. Not presumed to be true, or given the sanctity of truth. **Robinson**, 130/362, 60 S. E. 1005.

Admitted under proper instructions. **Jones**, 130/274, 60 S. E. 840; **Lyons**, 133/588, 66 S. E. 792; **Thompson**, 137/164, 73 S. E. 363.

Admission of, does not violate constitutional provision as to confronting with witness. **Jones**, 130/274, 60 S. E. 840.

Admissibility of, depends on prima facie showing that declarant was in article of death and conscious of his condition. **Robinson**, 130/362, 60 S. E. 1005. Admitted on prima facie showing. **Cook**, 134/347, 348, 67 S. E. 812.

Prima facie admissible, reception thereof not rendered erroneous by doubt arising from testimony later delivered. **Lowe**, 132/341, 63 S. E. 1114.

As to who inflicted the wound. **Cason**, 134/786, 68 S. E. 554.

That accused and deceased were not fighting, admissible. **Flannigan**, 135/221, 69 S. E. 171.

No error in admitting, as to cause of death and person who killed. **John**, 136/804, 72 S. E. 233.

What essential to consideration. Consciousness of condition, how inferred. **Barnett**, 136/65, 70 S. E. 868.

Not excluded because of physician's statement afterward made to declarant. **Thompson**, 137/164, 73 S. E. 363.

Admissibility of, though no expression of consciousness of impending dissolution. **Jefferson**, 137/382, 73 S. E. 499.

Inadmissibility of testimony as to, for want of preliminary proof, etc. 137/82, 72 S. E. 926.

Impeachment of. **Roberts**, 138/816, 76 S. E. 361; **Washington**, 137/219, 73 S. E. 512; **Land**, 11 A. 762, 76 S. E. 78.

As basis of conviction of murder. Exception to rule as to hearsay evidence. **Roberts**, 138/816, 76 S. E. 361.

Dying declaration—(Continued).

Law of, applied. **Williams**, 139/688, 77 S. E. 1062.

Properly received. **Devereaux**, 140/225, 78 S. E. 849.

Properly admitted on preliminary showing, and with proper instruction to jury. **Hawkins**, 141/212, 80 S. E. 711.

Weight of, not to be stressed in charge to jury. **Sewell**, 142/798, 83 S. E. 934. Undue weight given to, in charge of court; true rule as to. **Pyle**, 4 A. 811, 62 S. E. 540. Declarations of deceased in contradiction of, admissible. *Id.*

Statement of wounded person was not, though he died "pretty soon after." **Howard**, 144/169, 86 S. E. 540.

Admissible where made in articulo mortis. **Underwood**, 146/137, 90 S. E. 861.

Received with caution; but slight preliminary proof sufficient. **Moody**, 1 A. 773, 58 S. E. 262.

No error in admitting evidence of, and in charging jury on. **Curtis**, 2 A. 225, 58 S. E. 291.

Statement of rule as to, in admitting evidence, not error here. **Solomon**, 2 A. 92, 58 S. E. 381.

Variance in witness's testimony of, no ground for excluding it. **Carter**, 2 A. 254, 58 S. E. 532.

Necessary instructions to jury on. **Denton**, 6 A. 3, 63 S. E. 1132.

Electing to try accused on one count was admission of innocence charged in another count of the indictment. **Sessions**, 3 A. 13, 59 S. E. 196.

Employee's admissions, admissibility of. **C. & W. Ry. Co.**, 13 A. 748, 79 S. E. 932.

Engineer, explanatory statement of, as to how homicide by train occurred, not admissible. **Kemp**, 122/560, 50 S. E. 465.

Declarations of, as to killing by train when not admissible against railroad company. **Weinkle**, 107/370, 33 S. E. 471.

Estoppel by sayings, from assertion of title, not shown. **Bell**, 133/6, 65 S. E. 90.

Evidence of confessions. Jones, 139/104, 76 S. E. 748.

Not showing admission. Allred, 126/537, 55 S. E. 178. Whether admission shown here. Coleman, 15 A. 339, 340, 83 S. E. 154.

Exclusion of conversation connected with admission was not harmful error, where the party whose admission had been introduced admitted the same fact in his plea. May, 19 A. 306, 91 S. E. 435.

Of confession, no ground for, here. Brown, 105/640, 31 S. E. 557.

Of evidence, not error, where admission rendered its introduction unnecessary. Allen, 125/337, 54 S. E. 176; Aikin, 119/263, 46 S. E. 93.

Explanation, admission capable of, as distinguished from estoppel. Rowe, 3 A. 504, 60 S. E. 275.

Admission coupled with, here was not confession or direct evidence of guilt. Hart, 14 A. 714, 82 S. E. 164.

Admission explained, jury may disregard. Graham, 18 A. 284, 89 S. E. 304.

Admission in suing out warrant voluntarily dismissed is subject to. Wilkins, 8 A. 183, 185, 68 S. E. 941.

Should be allowed of admission improvidently made at trial. Hutchinson, 145/235, 89 S. E. 208.

Unreasonable, is equivalent to admission, when. Johnson, 4 A. 633, 62 S. E. 152. See Davis, 4 A. 274, 61 S. E. 132.

Of discovery and manner of it, declaration of prisoner in, when admissible. Goolsby, 133/427, 66 S. E. 159.

Failing to deny, admission by. Dudley, 18 A. 509, 89 S. E. 599; Dunham, 8 A. 668, 70 S. E. 111. Admission by failure to deny accusation of bystander. Thurman, 14 A. 543, 81 S. E. 796.

Feeling between parties, declaration of third person not admitted for purpose of showing. Bundrick, 125/753, 54 S. E. 683.

Fire, admission of loss by, by payment of insurance. Scottish Union Ins. Co., 135/188, 68 S. E. 1097.

Foreman, admissions of, not admissible as such in suit against master, when. Brush Co., 103/512, 30 S. E. 533.

Former trial, admission by party in testimony on, not "estop" him from testifying to the contrary. Phoenix Ins. Co., 113/432, 38 S. E. 992.

Admission on, admissible but not conclusive; such admission rebutted and explained. Hill, 21 A. 45, 93 S. E. 511.

Forthcoming bond in trover, giving of, did not operate as admission, so as to estop defendant from denying that he ever had possession of the property. Bell, 111/672, 36 S. E. 904.

Foundation for confession and incriminating admission, sufficient. Lucas, 146/315, 91 S. E. 72.

Fraudulent representation that deed was mortgage; testimony of declaration of vendor, when not admissible. Russell, 136/136, 70 S. E. 1018.

Genalogy, admissibility of decedent's declaration on question of. Malone, 113/791, 39 S. E. 507, 84 Am. St. R. 259.

General manager, admission of, in letter to roadmaster, admissible against railroad company, here. G. & F. Ry. Co., 10 A. 101, 72 S. E. 951.

Gift of land to declarant in possession, declaration not admissible to prove. Rucker, 136/830, 72 S. E. 241.

Grantor's declaration, admissibility of. Chambers, 113/344, 38 S. E. 848. As to land intended to be conveyed. St. John, 111/158, 36 S. E. 610. When inadmissible in favor of grantee. Hollis, 103/75, 29 S. E. 482. On issue whether deed was fraudulent. Hayes, 105/299, 31 S. E. 166; Cohen, 105/339, 31 S. E. 205. To attorney who drew deed, that it was not a deed as she understood, inadmissible. Russell, 136/136, 70 S. E. 1018.

Guardian, admission by, before he became such, not admissible to bind wards. Johnston, 120/767, 48 S. E. 373. Admission of deceased guardian, as to ward's ownership of funds invested in stock issued by defendant to the guardian as an individual, ex-

cluded. *Williams*, 22 A. 656, 660, 97 S. E. 249.

Guilt, admission or confession of. *Mize*, 135/295, 69 S. E. 173; *Weaver*, 135/321, 69 S. E. 488; *Roberson*, 135/654, 70 S. E. 175; *Hixon*, 130/479, 61 S. E. 14; *Webb*, 140/779, 79 S. E. 1126.

Heard by party, admissibility dependent on whether declaration was; proper practice. *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Heir, declaration of, as to existence of will and its destruction, admissibility of, in proceeding to establish lost will. *Scott*, 113/795, 39 S. E. 500, 84 Am. St. R. 263. Admission as to heirship, consideration of. *Slappey*, 136/692, 71 S. E. 1075.

High grade of evidence, confessions are. *Luby*, 102/636, 29 S. E. 494.

Homicide, confession proved in case of. *Lucas*, 146/315, 91 S. E. 72. Confession of killing for "nothing," admissible. *Lindsay*, 138/818, 76 S. E. 369.

Admission of, answer to accusation relevant as. *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Admission of, coupled with exculpatory statement, no basis of presumption. *Perkins*, 124/6, 52 S. E. 17; *Green*, 124/344, 52 S. E. 431. See *Mann*, 124/764, 53 S. E. 324, 4 L. R. A. (N. S.) 434. With and without exculpation, admissibility and effect of. *Webb*, 140/779, 79 S. E. 1126; *Braunon*, 140/787, 80 S. E. 7.

Hope or fear not induced, but originating in mind of accused, confession on, not excluded. *Hill*, 148/521, 97 S. E. 442; *Hecox*, 105/625, 31 S. E. 592; *Milner*, 124/89, 52 S. E. 302. When not excluded as induced by. *Waycaster*, 136/95, 100, 70 S. E. 883. Confession, inadmissible because presumably induced by hope of benefit. *Smith*, 125/252, 54 S. E. 190. Confession induced by hope or fear held out to another, not to be considered, though not made in his presence, and made to one ignorant of the inducement. *Griner*, 121/615, 49 S. E. 700.

Husband, declarations of, when not admissible against wife. *Smith*, 13 A. 838, 80 S. E. 1051. Admission of title in, by wife in applying for homestead. *Clements*, 106/450, 32 S. E. 584.

Admission of, in conversation with wife, overheard by witness, admissible. *Ford*, 124/793, 53 S. E. 335; *Williams*, 139/591, 77 S. E. 818.

Declaration by wife in presence of, to show threat by him, when not admissible. *Chapman*, 109/157, 34 S. E. 369.

Declaration by, accompanying act of delivery to warehouseman, of wife's ownership, admissible. *Myers*, 102/579, 27 S. E. 681. Declarations of former husband, and of wife's attorney, that divorce was granted, inadmissible to show that fact. *Wilson*, 108/275, 33 S. E. 975. Admission of husband's agency, by wife, may be proved against her. *Ham*, 2 A. 71, 53 S. E. 316. Admission that person making it was acting as agent for his wife, receivable against him. *Hall*, 142/395, 83 S. E. 92.

Impeach, declaration admissible only to, cannot be treated as substantive evidence of fact it affirms. *Stallins*, 140/57, 78 S. E. 421.

Implied admission as to correctness of claim, from paying part and obtaining indefinite extension as to balance; no estoppel. *Long*, 7 A. 460, 67 S. E. 123.

In pleading, admissible. *Hillis*, 16 A. 653, 85 S. E. 931.

Rule as to. *Sizer*, 129/148, 58 S. E. 1055.

Imprisoned negro surrounded by crowd of white men, confession not excluded because made by, to his custodian, nor because of subsequent promises of protection, etc. *Hilburn*, 121/345, 49 S. E. 318.

Incriminating admission not to be treated as confession. *Thomas*, 143/268, 84 S. E. 587; *Ransom*, 2 A. 826, 59 S. E. 101; *Smarrs*, 131/21, 24, 61 S. E. 914; *Powell*, 101/10, 29 S. E. 309, 65 Am. St. R. 277; *Lucas*, 146/315, 328, 91 S.

E. 72. Confession not shown by proof of. *Riley*, 1 A. 651, 651, S. E. 1031. Law of confession not applied to. *Ransom*, 2 A. 826, 59 S. E. 101.

Rule as to admissibility of confessions applied to. *Mill*, 3 A. 414, 60 S. E. 4; *Brown*, 3 A. 479, 60 S. E. 216.

Independent facts discovered in consequence of, when admissible. *Goolsby*, 133/427, 66 S. E. 159. Admissibility of. *Goolsby*, 133/427, 66 S. E. 159; *McCrory*, 11 A. 788, 76 S. E. 163.

After shooting: "I have got the scoundrel," received as. *Graham*, 125/48, 53 S. E. 816.

By contract stipulation against illegal use of rented house, if other facts show it was a subterfuge. *Rivers*, 118/44, 44 S. E. 859. Accused said he had intended to overpower jailer and escape. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33.

In murder case. *Turner*, 138/808, 76 S. E. 349.

Letter of accused. *Powers*, 138/624, 75 S. E. 651.

Effect of silence. *Wright*, 136/130, 70 S. E. 1102. Silence does not amount to, unless circumstances call for denial. *Graham*, 118/807, 45 S. E. 616. Inculpatory statements in presence of accused, not met by denial, admissible when. *Gates*, 20 A. 171, 92 S. E. 974. Inculpatory statements in presence of accused, by his brother, admissible under proper instructions. *Smith*, 148/332, 96 S. E. 632.

That which accused is compelled to furnish is incompetent. *Calhoun*, 144/679, 87 S. E. 893. When not excluded by reason of prior statement of sheriff to prisoner. *Waycaster*, 136/95, 100, 70 S. E. 883.

Conduct and utterances indicating consciousness of guilt, such as effort to suppress evidence. *Taylor*, 135/622, 70 S. E. 237. See *Roberson*, 135/654, 70 S. E. 175.

As to sale of liquors, not indentifying time and place of sale, no basis for charge on confessions. *Hutchinson*, 5 A. 598, 63 S. E. 597.

By witness, at trial; admissibility of, on his subsequent trial; cases collected. *Adams*, 129/248, 58 S. E. 822, 17 L. R. A. (N. S.) 468, 12 Ann. Cas. 158. In *judicio* admission. *Cin. Ry. Co.*, 3 A. 403, 60 S. E. 8; *Rowe*, 3 A. 504, 60 S. E. 275.

When executor as such not estopped by. *Harris*, 133/104, 65 S. E. 250.

Statement in return of guardian was not, of his surety. *Rich*, 126/466, 55 S. E. 336.

Rule as to, when not applied to allegation of what plaintiff is entitled to. *Huger*, 126/684, 56 S. E. 64.

Record of setting apart of homestead admissible as. *Carrie*, 145/184, 188, 88 S. E. 949.

Estopped by. *American Mills Co.*, 20 A. 34, 92 S. E. 760; *Long*, 7 A. 461, 67 S. E. 124. Estoppel to deny. Effect of allegations of negligence. *Powell*, 145/704, 89 S. E. 753, L. R. A. 1917 A. 306.

Effect of. *Harper*, 21 A. 819, 95 S. E. 306.

By exception to admission of evidence. *Beck*, 127/95, 56 S. E. 242.

By counsel. *Blandon*, 6 A. 782, 65 S. E. 842.

By allegation as to plaintiff's age. *Union Mills*, 144/716, 87 S. E. 1029.

By administrator applying for leave to sell property, that decedent owned it. *Lyons*, 142/260, 82 S. E. 651.

As to non-liability of codefendant, acted on; effect of. *Vale Royal Mfg. Co.*, 8 A. 483, 70 S. E. 36.

As affecting admissibility of contradictory testimony. *Bunn*, 18 A. 66, 38 S. E. 798.

Allowed parol evidence to be received to disprove contention of party to contract. *Williams*, 124/913, 53 S. E. 564.

Insured, admissions or declarations of, tending to show policy on life was procured through misrepresentations, when admissible against beneficiary. *Sup. Con.*, 107/97, 32 S. E. 946.

Intention, declarations shortly before death held not admissible to show. **Howard**, 101/224, 28 S. E. 648.

To commit crime; admissibility of declaration as tending to show intent. **Sanders**, 113/270, 38 S. E. 841.

Not proved by testator's statements after executing will. **Smith**, 108/232, 33 S. E. 876.

To revoke will, declaration as to. **Coffee**, 119/533, 46 S. E. 620.

Lawful and peaceable, when declaration of decedent not receivable to show. **McCray**, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Of another, declarations as to, excluded, as mere conclusion. **Gray**, 12 A. 634, 77 S. E. 916.

Interest, declarations against, ante litem. **Hayes**, 105/300, 31 S. E. 166; **Elwell**, 101/496, 28 S. E. 833.

Declarations for and against, to be weighed, to determine as to their admissibility. **Massee-Felton Lumber Co.**, 122/297, 50 S. E. 92; **Hollis**, 103/75, 29 S. E. 482.

Declarations and entries against, by one since deceased, admissible, as to what facts. **McBrayer**, 122/248, 50 S. E. 95; **Massee-Felton, Lumber Co.**, 122/297, 50 S. E. 92.

Declaration against, admissible for opposite party to divorce proceeding. **McCord**, 140/170, 173, 78 S. E. 833.

Admission treated as prima facie true, as against interest of party making it. **Newsome**, 19 A. 265, 91 S. E. 441; **William Hester Marble Co.**, 22 A. 433, 96 S. E. 269.

Admission of partner against, admissible to prove liability of partnership. **Thompson**, 108/797, 33 S. E. 986.

Admission against, read in later proceeding, without reading entire testimony. **Hope**, 142/311, 82 S. E. 923.

Letter admissible as, though written after settlement. **Clark**, 141/612, 81 S. E. 870.

Declarations of party in his own interest, not admissible. **Noble**, 124/962, 53 S. E. 463. Rule and exception. **Copeland**, 147/601, 95 S. E. 13. As to extent of land boundaries. **Lewis Mfg.**

Co., 147/203, 93 S. E. 206. When not admissible for purpose of impeaching witness. **L. & N. R. Co.**, 129/844, 60 S. E. 162. Prior to crime in question, S. E. 255. As shown by books of account, when not admissible. **Augusta Naval Stores Co.**, 133/139, 65 S. E. 370. In letter written by him, not admitted in his behalf. **Birmingham R. Co.**, 101/183, 28 S. E. 534.

Joint defendants, admission of one of, not admissible as against other, when. **Graham**, 14 A. 287, 80 S. E. 693.

Declaration of person jointly indicted with accused separately tied, when not admissible. **Gibbs**, 144/166, 86 S. E. 543. Declaration of joint offender, made after the crime, not admissible against another. **Hicks**, 11 A. 265, 75 S. E. 12.

Joint plaintiffs, admission of one of, affecting terms of contract, admissible against all. **McCullough**, 134/512, 68 S. E. 89.

Judge, declarations of, after judgment, not admitted to impeach it. **Lockett**, 8 A. 722, 70 S. E. 255.

Judicial admission made improvidently and under mistake, relief against. **Commercial Assurance Co.**, 130/196, 60 S. E. 554.

Jury, competency of declaration left to, no error as against party contending it is incompetent. **Wheeler**, 112/43, 37 S. E. 126. Juror's admission not used to impeach his verdict, **Flanagan**, 106/114, 32 S. E. 80. Jury's duty, as to admissibility of confession. As to reconciling testimony. **Price**, 114/856, 40 S. E. 1915.

Law of confessions, admission warrants no consideration of, when. **Owens**, 120/296, 48 S. E. 21.

Legatees under will attacked as a forgery. admission and conduct of, admissible in evidence. **Ginn**, 142/420, 83 S. E. 118.

Letter, self-serving declaration in, not admissible for party who wrote; but declaration against interest admissible for opposite party (in divorce case). **McCord**, 140/170, 173, 78 S. E. 833.

Letter—(Continued).

In nature of admission, after alleged breach of contract, admissible, when. **Williams**, 19 A. 477, 91 S. E. 877.

Of adversary, containing statements favorable and others unfavorable to himself, party offering could rebut the latter. Nonsuit based on the latter. **Stallings**, 22 A. 597, 96 S. E. 708.

Admission by failure to answer, in reasonable time. **Improved Fertilizer Co.**, 15 A. 611, 84 S. E. 132.

Offered as admission must be accompanied by proof of its authorship. **Brooke**, 122/358, 50 S. E. 146.

Admissions in, by prisoner, not excluded because they became known through its being opened by the sheriff after it had been entrusted to him sealed, to be mailed. **Sanders**, 113/267, 33 S. E. 841.

Amounting to declaration of party in his own interest, not admissible. **Noble**, 124/962, 53 S. E. 463. Letters not showing contract, but self-serving declarations, not admissible. **George W. Muller Co.**, 137/412, 73 S. E. 669. Admission of genuineness of letters, by suing on contract made by them. **Bailey**, 1 A. 401, 58 S. E. 120.

Liability which does not exist in fact, admission of, does not create a liability. **Cook**, 23 A. 284, 98 S. E. 92.

Admission of, not shown by parent's statement that he would "do the right thing," etc., where injury was caused by son driving the parent's automobile. **Dougherty**, 21 A. 427, 94 S. E. 636.

Lien, admission of non-existence of, and of payment of mortgage, received on behalf of claimant. **Askew**, 147/613, 95 S. E. 5.

Like statements of the same person made at other times, declaration not rendered admissible by showing. **McBride**, 125/517, 54 S. E. 674.

Main fact, admission of, and of minor or subordinate facts, distinguished. **Owens**, 120/298, 48 S. E. 21; **Suddeth**, 112/408, 37 S. E. 747; **Lee**, 102/226, 29 S. E. 264.

Malice and motive, declaration of accused showing, admissible. **Hill**, 148/521, 97

S. E. 442. Declarations and conduct of accused prior to homicide, admissible to show malice or motive. **Roberts**, 123/146, 51 S. E. 374; **Campbell**, 123/533, 51 S. E. 644. Declaration of accused, as evidence of. **Davis**, 11 A. 804, 76 S. E. 391.

Marriage or not, admissibility of declaration as to. Declaration of fact evidentiary of invalidity of marriage, not admissible. **Whigby**, 135/584, 69 S. E. 1114.

When shown by admissions. **Murphy**, 122/149, 50 S. E. 48.

Admission of, on trial for bigamy. **McSein**, 120/175, 47 S. E. 544; **Oliver**, 7 A. 696, 67 S. E. 886.

Material facts discovered by reason of confession may be proved, if no unlawful violence was used to obtain the disclosure, though obtained through the influence of fear. **Johnson**, 119/257, 45 S. E. 960.

Money rule, admission by movant in, when receivable against his transferee. **Continental Fertilizer Co.**, 140/39, 78 S. E. 460.

Motorman of car that inflicted injury, declarations of, when not admissible. **Col. R. Co.**, 120/589, 48 S. E. 149.

Murder, admissibility of testimony of conduct and declaration of one accused of. **Crumbly**, 141/17, 80 S. E. 281; **Frank**, 141/243, 80 S. E. 1016; **Worthington**, 141/307, 80 S. E. 1001; **Walker**, 141/525, 81 S. E. 442. Confession of, what incriminating admission was not. **Powell**, 101/10, 29 S. E. 309.

Confession of, statements amounting to. **Jones**, 130/274, 60 S. E. 840.

Declarations of one accused of, shortly after wound inflicted, manifesting malice or indifference. **Perry**, 110/234, 36 S. E. 781.

Negligence, erection of guard-rail after accident, not equivalent to admission of. **Central Ry. Co.**, 121/658, 49 S. E. 683.

Admission of, evidence of settlement with third person injured not received as. **Ga. Ry. Co.**, 122/547, 50 S. E. 478. Admission of, not made by taking, after injury, a precaution that could have been taken before. **Ga. So. R. Co.**, 116/

Negligence—(Continued).

164, 42 S. E. 405, 59 L. R. A. 118; *Portner Co.*, 116/175, 42 S. E. 408.

Admission of, not shown by repairs made after injury. *Great Cosmopolitan Shows*, 7 A. 236, 66 S. E. 624.

Of master, declaration of deceased servant or agent, irrelevant on issue of, here. *Smith*, 112/680, 37 S. E. 861.

Admission of killing by railroad raised presumption of, not of value; not enough to take entire burden. *W. & A. R. Co.*, 102/13, 29 S. E. 130.

Admission of plaintiff, that injury resulted from his fault, admissible. *Central R. Co.*, 112/914, 38 S. E. 350. By decedent, that he was to blame for injury resulting in his death, admissible. *Murdock*, 12 A. 276, 77 S. E. 181.

Admission of liability, or failure to deny, raises issue for jury in action for negligence of servant. *Fielder*, 139/515, 77 S. E. 618.

Admission exonerating from charge of, explainable. *Southern B. Co.*, 116/696, 43 S. E. 64.

Newly discovered testimony as to declaration, as ground for new trial. *Holton*, 9 A. 419, 71 S. E. 599.

Next friend, admission of, as to her interest, not effective as to interest of minor plaintiff. *Buchan*, 147/450, 94 S. E. 578.

Note, declarations of payee of; when without probative value as against indorsee, though admitted without objection. *Rabun*, 21 A. 43, 93 S. E. 524. Declarations of payee or others, to show indorsee suing maker of note was not bona fide before maturity, when not admitted. *Harris*, 107/407, 33 S. E. 404. Admission that a note sued on was unpaid on a certain date could be shown by introducing mortgage given on that date to secure it. *Campbell*, 20 A. 88, 92 S. E. 545.

Notice, admission of, by giving replevy bond. *Cin. Ry. Co.*, 3 A. 403, 60 S. E. 8. Objected to when offered, confessions must be; objection too late after verdict. *Alford*, 137/459, 73 S. E. 375.

Officer, admissions of, when not bind corporation. *Sizer*, 129/148, 58 S. E. 1055.

Admission that defendant was, or participated in management, not shown. *Cadwalader*, 137/142, 72 S. E. 903.

In charge of accused, confession or admission to, when not excluded. *Fuller*, 109/809, 35 S. E. 298.

Having the accused in custody, confession induced by advice of, to the effect that if the accused knew anything she had better tell it, inadmissible. *Dixon*, 113/1039, 39 S. E. 846. Admissible without first calling arresting officer to ascertain if he threatened or induced. Induced by hope not generated by means out of accused's mind, admissible. Duty of jury as to. *Price*, 114/855, 40 S. E. 1015.

Open and conclude argument, what admissions necessary, to shift burden of proof and give right to. *Friesé*, 15 A. 786, 84 S. E. 219; *Wade*, 16 A. 106, 84 S. E. 598.

Admissions to obtain, must be made in plea, not merely orally. *DuBignon*, 122/263, 50 S. E. 65; *Dorough*, 108/812, 34 S. E. 168. When insufficient. *Central R. Co.*, 110/168, 35 S. E. 345; *Horton*, 110/355, 35 S. E. 663; *Whitaker*, 110/857, 36 S. E. 231.

Admission sufficient to obtain; and when it must appear in defendant's plea. *Bank of Richland*, 120/622, 627, 48 S. E. 240.

Admission not conceding prima facie case not sufficient to obtain. *Crankshaw*, 1 A. 363, 58 S. E. 222.

Oral declarations of title, or of trust, when not sufficient. *Ellington*, 127/87, 56 S. E. 134, 119 Am. St. R. 320. Admission of oral authority to sell land, effect of. *Northington*, 118/584, 45 S. E. 447.

Other case, admission in answer filed in, admissible against party who made it, if relevant. *McTyer*, 142/852, 83 S. E. 955; *Sons and Daughters of Job*, 4 A. 235, 61 S. E. 134.

Answers to interrogatories in, when admissible as admissions. *Sizer*, 129/148, 58 S. E. 1055.

Admissions on trial of, when no harmful error in receiving. *Heatley*, 135/154, 68 S. E. 783.

Admission made in, not admissible on trial of case to which person making it is no party. *McTyer*, 142/850, 88 S. E. 955.

Admission receivable in; allegation of petitioners in bankruptcy. *Hutchinson Shoe Co.*, 143/172, 84 S. E. 453.

Ownership of timber, admission against, not shown by non-compliance with municipal ordinance as to timber business. *Sinclair*, 102/91, 29 S. E. 139.

Confession of want of, not shown by admission of want of possession. *Lee*, 120/194, 195, 47 S. E. 545.

Admission of, as result of interposing counter-affidavit to distress warrant. *Price*, 4 A. 46, 60 S. E. 880.

Admission against, not treated as confession. *Lee*, 102/221, 29 S. E. 264.

Pain, declarations of, when admissible. *Southern Ry. Co.*, 10 A. 532, 541, 73 S. E. 763.

Parol, admission cured error in admitting. *Davitt*, 108/670, 34 S. E. 327; *Bluthenthal*, 108/810, 33 S. E. 996.

Partnership or not, declarations oral or written not admissible on issue of. *Thompson*, 108/797, 33 S. E. 986.

Proof of, by admissions. *Swygert*, 13 A. 640, 79 S. E. 759; *Cary*, 15 A. 280, 82 S. E. 918; *Reliance Fertilizer Co.*, 23 A. 582, 99 S. E. 44.

Not shown by declarations of alleged member of firm, as against one denying it. *Smith*, 113/872, 39 S. E. 428; *Shaw*, 133/446, 66 S. E. 240.

Admission of partner, when admissible in action against, declarant denying its existence. *Dodds*, 110/303, 34 S. E. 1004.

Declarations of partner admissible, not to prove the partnership, but in corroboration of independent evidence thereof. *Davidson*, 2 A. 432, 58 S. E. 687, 688.

Admissions by partner, when binding on. *Ward-Truitt Co.*, 23 A. 673, 99 S. E. 153.

Not admitted by admission of correctness of account against alleged firm. *Friese*, 15 A. 786, 84 S. E. 219.

Admission of, where not acted on, did not authorize recovery, the facts

showing no partnership. *Thornton*, 108/4, 33 S. E. 680.

Admission by partner, that an account against the firm was correct, was prima facie proof of correctness. *Dolvin*, 4 A. 653, 62 S. E. 95.

Party offering declarations of adversary may rebut part unfavorable to himself. *Stallings*, 22 A. 600, 96 S. E. 708; *Christian*, 120/314, 47 S. E. 923.

Testifying, not required to make admission as to contents of accessible writing. *Gate City Ins. Co.*, 5 A. 586, 63 S. E. 638.

Admission of, did not result from testimony of witness introduced by him. *Cicero*, 129/149, 58 S. E. 850.

Under whom defendant claimed land, admission of, when admissible. *Tison*, 8 A. 91, 68 S. E. 651.

Payment of draft, by drawee no admission of liability. *Drew*, 113/606, 38 S. E. 967.

For land, admission of. *Patterson*, 136/664, 71 S. E. 1117.

Pedigree, admissibility of declarations as to. See catchword "Decedent," supra.

Petition, admission by failure to deny allegation of. *Improved Fertilizer Co.*, 15 A. 610, 84 S. E. 132; *Ivey*, 8 A. 760, 70 S. E. 140.

Admission of allegation made it unnecessary to introduce exhibit attached to petition. *Wachstein*, 120/229, 239, 47 S. E. 586.

Admission in, is part of evidence, though not formally tendered, and though allegations stricken by amendment after evidence closed. *Lydia Pinkham Co.*, 108/138, 33 S. E. 945.

Admission by evasiveness of answer to. *Jones*, 7 A. 540, 67 S. E. 280. Admission by not denying allegation of petition, admissible against accused. *Oliver*, 7 A. 696, 67 S. E. 886; *Wilcox*, 8 A. 537, 69 S. E. 1068.

Plea, admission in, when sufficient to establish fact. *Woodard*, 103/498, 30 S. E. 522.

Admission in, evidence for opposite party, though the plea be withdrawn. *Improved Fertilizer Co.*, 15 A. 609, 84 S. E. 132.

Plea—(Continued).

Admission in, renders proof unnecessary. *Eastman Mills*, 136/388, 71 S. E. 667.

Admission in, no cause for new trial that plaintiff was allowed to read. *Rome Ins. Co.*, 142/253, 254, 82 S. E. 641.

Admission in, no disproof of, by party making it, without withdrawing it. *Florida Yellow Pine Co.*, 140/321, 78 S. E. 900.

Admission in, may be withdrawn by amendment, and testimony introduced in support of the plea as amended. *Ga. R. Co.*, 113/897, 39 S. E. 299.

Admission in, jury may believe a part and not the other. *Christian*, 120/315, 47 S. E. 923.

Admission in, as to discharge in bankruptcy, effect of. *Woodcock*, 18 A. 146, 149, 88 S. E. 989.

Admission in, admissible in another case, without introduction of whole plea. *Watkins*, 14 A. 321, 80 S. E. 694.

Contradictory, admission in, evidence for plaintiff. *White Sewing Machine Co.*, 7 A. 283, 66 S. E. 811.

Admission in, of execution of deed, rendered proof of execution unnecessary. *Vizard*, 119/918, 47 S. E. 348.

Pleading, admissions in, when admissible. *Tison*, 8 A. 91, 68 S. E. 651; *Whitaker*, 11 A. 220, 75 S. E. 258.

Introduced by opposite party to show admissions in *judicio*, though withdrawn. *Bunn*, 18 A. 66, 88 S. E. 798; *Wilson*, 11 A. 816, 76 S. E. 648; *Coolsey*, 111/443, 36 S. E. 786.

Admission in former litigation, when admissible. *St. Paul Ins. Co.*, 113/786, 39 S. E. 483.

In another case; admission in, admissible without introduction of whole plea. *Watkins*, 14 A. 321, 80 S. E. 694.

Admission in, or failure to deny allegation, as basis of receiving evidence. *James*, 598, 599, 95 S. E. 11.

Admission in, withdrawn by amendment, admissible as evidence for opposite party. *Central of Ga. R. Co.*, 23 A. 396, 98 S. E. 357.

Admissions of fact in, as estoppels. *Harris*, 101/641, 29 S. E. 302.

Pleading—(Continued).

Admission in, when may be put in evidence by opposite party, though stricken by amendment. *Wynn*, 109/256, 34 S. E. 341.

Admission in, taken as true; proof of the fact not to be made. *Lovell*, 145/106, 88 S. E. 569.

Stricken, admission in, may be tendered and used by opposite party. *Heater*, 128/538, 58 S. E. 165.

Prosecuted for benefit of usee, admissions in, not admissible against nominal plaintiff when sued by third person. *Netrow Mfg. Co.*, 7 A. 163, 66 S. E. 399.

Admission in, may be withdrawn, and, though admissible as evidence, may be denied or explained. *Ala. R. Co.*, 114/627, 40 S. E. 794. Cures error in requiring production of papers. *Bullock*, 113/755, 40 S. E. 783.

Admission in, may be used against party making it; his statements in his favor have no probative value. *Austin*, 2 A. 91, 58 S. E. 318.

Admissions in, are evidence. *Davis*, 137/451, 73 S. E. 579.

Admission in, admissible as, though changed by amendment. *Cicero*, 129/335, 58 S. E. 850.

Admission by, consideration of. *Livingston*, 132/1, 63 S. E. 694; *Spencer*, 132/516, 64 S. E. 466.

Admissions, as result of equivocal statements in. *Central Ry. Co.*, 5 A. 564, 63 S. E. 642.

Effect of evasive answer in. *Young*, 15 A. 679, 84 S. E. 165.

Possession, declarations of one in, received to show its adverse character. *Copeland*, 147/601, 95 S. E. 13; *Dozier*, 117/786, 791, 45 S. E. 61; *Johnson*, 139/219, 77 S. E. 73.

Declarations characterizing, as adverse, admissibility of. *Godley*, 132/514, 64 S. E. 546.

Admissibility of testimony of admissions and declarations concerning. *Banks*, 140/640, 79 S. E. 572.

Declaration of tenant in, not in disparagement of title, when properly excluded. *Smith*, 137/465, 73 S. E. 577.

Declarations of person in, admissible for what purpose. *Causey*, 143/8, 84 S. E. 58.

Declaration of ownership of land, by one in, was relevant. *Daniel*, 144/81, 86 S. E. 239.

Declarations of one in, when not admissible as against another. Materiality of time when they were made. *Whelchel*, 116/431, 42 S. E. 776.

Declaration of one in, that he "always claimed an interest," objectionable. *Smith*, 141/630, 81 S. E. 895.

Declaration admissible to explain character of, in reply to admissions. *Banks*, 140/640, 79 S. E. 572.

Declaration not received to show; aliter as to its character, if already proved. *Copeland*, 147/601, 95 S. E. 13.

Of bank check, admission of, by plaintiff ten days after its receipt, relevancy of. *Kennedy*, 140/302, 78 S. E. 1069, Ann. Cas. 1914D, 355.

Admission of, by defending against action to recover land. *Paden*, 140/46, 78 S. E. 412. Character of possession. *Banks*, 140/640, 79 S. E. 572.

Admission as to character of, effect of. *Cochran*, 111/400, 36 S. E. 762.

Preliminary proof of confession, sufficient. *McWhorter*, 118/55, 44 S. E. 873.

Immaterial that jury heard. *Griner*, 121/614, 49 S. E. 700.

Presence and witnessing crime, effect of admission of. *Kidd*, 101/528, 28 S. E. 990.

Previous decisions, points as to admissions and confessions ruled by. *Cantrell*, 141/98, 80 S. E. 649.

Prima facie case, admission of, must be by written plea. *Dorough*, 108/812, 34 S. E. 168.

Admission of, to obtain opening and conclusion of argument. *Northington*, 118/584, 45 S. E. 447.

Admission of, not to be withdrawn, though burden so assumed be not carried. *Fisher*, 108/490, 34 S. E. 172.

For admission or confession need not include testimony offered by accused. *Wilburn*, 141/510, 81 S. E. 444.

Principal in second degree, confession as. *Lowe*, 125/55, 53 S. E. 1038.

Admissions of, admissible on trial of accessory. *Gullatt*, 14 A. 80, 340.

Declaration of, when not admitted against alleged accessory. *Howard*, 109/137, 34 S. E. 330.

Confessions of, when admissible on trial of accessory before the fact. *Brooks*, 103/50, 29 S. E. 485.

Admissions of, when received as against surety, and when not. *Bailey*, 122/617, 50 S. E. 388.

Privy in estate, declarations of, after title passed from him, not received to impeach his deed. *Byrd*, 108/2, 33 S. E. 688.

In blood, law as to admissibility of admission of, when not relevant. *Slappay*, 136/692, 71 S. E. 1075.

Prosecutor, admission of, not received. He is not a party to criminal case. *Bridges*, 110/246, 34 S. E. 1037.

Admission by, not original evidence for accused, but received to impeach prosecutor. *Belt*, 103/13, 29 S. E. 451.

Publication of subscription list in newspaper controlled by subscriber, admission by. *Y. M. C. A.*, 140/292, 78 S. E. 1075, 48 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 136.

Purchase, declarations accompanying and relating to, admissible, where the purchase was relevant. *Smith*, 13 A. 837, 80 S. E. 1051.

Receipt by carrier for goods as in good order is a binding admission. *Kavanaugh*, 120/65, 47 S. E. 526, 1 Ann. Cas. 705.

In full satisfaction limited to admission of extent of injury, error. *Donaldson*, 102/42, 29 S. E. 135.

Recitals in written instrument, admission by. *Coldwell*, 138/233, 75 S. E. 425.

Reconvey land on repayment of money, admission that vendee was to, admissible in defense to suit for land. *Spencer*, 132/515, 4 S. E. 466.

Relationship, admissibility of declarations as to. *Lanier*, 123/626, 633, 51 S. E. 632.

Admission of; effect of naming, in will, woman as daughter of testator. *Gordon*, 141/347, 80 S. E. 1007.

Res gestæ, declarations admissible as part of. *Southern Ry. Co.*, 126/3, 54 S. E. 911. Not otherwise. *Perdue*, 126/113, 54 S. E. 820.

Declaration as part of, when not objectionable as afterthought. *Atlanta &c. R. Co.*, 133/231, 65 S. E. 437.

Declaration as part of, no error in excluding, as not free from suspicion of device, etc. *Tucker*, 133/470, 66 S. E. 250.

Declarations, when admissible as part of. *Smith*, 13 A. 837, 80 S. E. 1051.

See 12, *infra*; and Criminal Law, 5.

Riotous assembly, declaration of member of, admissible against the others. *Green*, 109/544, 35 S. E. 97.

Rule that entire conversation or document connected with it may be introduced by party against whom it is offered, not render irrelevant matter admissible. *Brown*, 119/573, 46 S. E. 833. Matter having no relation to the admission is not admissible under this rule. *Crawford*, 20 A. 576, 93 S. E. 173. Not applied to conversation with decedent whose executor was opposite party here. *May*, 19 A. 306, 91 S. E. 435.

Scanned with care. Rule to be applied to admissions of one sought to be charged as partner. *Mims*, 3 A. 247, 59 S. E. 711.

Self-dis-serving declarations, rule as to admission of. *Ga. R. Co.*, 108/509, 34 S. E. 316.

Self-serving declaration, not admitted. *Deal*, 18 A. 70, 88 S. E. 902. *Garner*, 6 A. 789, 65 S. E. 842; *Atlanta R. Co.*, 122/95, 49 S. E. 818; *Hightower*, 126/8, 54 S. E. 939, 7 Ann. Cas. 927; *George W. Muller Co.*, 137/412, 73 S. E. 669; *Aripeka Mills*, 132/211, 84 S. E. 455.

Of pain, etc., when inadmissible. *Goodwyn*, 2 A. 470, 58 S. E. 688.

As to declarant's illness, rejected. *Peacock*, 10 A. 402, 73 S. E. 404. In letters between party offering them and his agent, inadmissible. *McNamara*, 10 A. 669, 73 S. E. 1092.

In letter, excluded. *Swift*, 15 A. 259, 82 S. E. 914; *Binder*, 13 A. 384, 385, 79 S. E. 216.

Error in excluding writings between principal and agent as. *Shippey*, 17 A. 128, 132, 86 S. E. 407.

By one accused of crime, not admissible. *Dixon*, 116/186, 42 S. E. 357; *Williams*, 123/141, 51 S. E. 322; *Ware*, 139/109, 76 S. E. 857. Self-serving sayings and conduct of accused, admissibility of. *McCullough*, 11 A. 612, 76 S. E. 393.

Written, when admissible for opposite party. *McBrayer*, 122/248, 50 S. E. 95; *Massee-Felton Lumber Co.*, 122/297, 50 S. E. 92. See *Grant*, 122/742, 50 S. E. 946.

Rule as to, excludes proof by accused that he did not attempt to escape. *Lingerfelt*, 125/4, 53 S. E. 803, 5 Ann. Cas. 310. That accused surrendered himself. *Williams*, 23 A. 129, 97 S. E. 563. Declaration or conduct of self-serving character, inadmissible. *Richter*, 143/470, 85 S. E. 819; *Reeves*, 143/569, 85 S. E. 756.

Demand not established by. *Hightower*, 126/8, 54 S. E. 939, 7 Ann. Cas. 927.

That party knew nothing of money being paid to him, when not admissible. *Lupo*, 130/410, 60 S. E. 1003.

Testimony of order by one in presence of other party not objectionable as. *McCullough*, 134/512, 68 S. E. 89.

Not admissible to show non-payment. *Norton*, 134/22, 67 S. E. 425.

That defendant did not buy lots charged to him. *Tompkins*, 139/378, 77 S. E. 623.

Testimony was not open to objection as. *Alexander*, 140/268, 78 S. E. 1071.

Not admissible for declarant, on trial of divorce case. *McCord*, 140/170, 173, 78 S. E. 833.

Deceased legatee's statement of testator's sound mind, etc., not admissible. *Gordon*, 141/348, 80 S. E. 1007.

Not admissible to show compliance with condition subsequent. *Groover*, 148/794, 798, 98 S. E. 503.

Servant, declaration of, as to defective tool, not admissible against master un-

less part of *res gestæ*. **Rogers**, 144/390, 87 S. E. 397.

Settlement, admissions during negotiations for, when not excluded. **Austin**, 5 A. 551, 63 S. E. 640.

Admission in offer of, when admissible, being no offer to compromise. **Kelly**, 116/875, 43 S. E. 280.

Admission of liability, on demand for, not rejected as made with view to compromise. **Teasley**, 110/498, 35 S. E. 782, 78 Am. St. R. 113.

Confession coupled with proposition of, when admissible. **Hecox**, 105/625, 31 S. E. 592.

Signing, admission of, when not received in absence of subscribing witness. **Dunaway**, 142/383, 82 S. E. 1071.

Silence, as evidence of ratification. **Brooke**, 19 A. 21, 90 S. E. 1037.

As admission. **Gates**, 20 A. 171, 92 S. E. 974; **Dudley**, 18 A. 509, 89 S. E. 599; **Thurman**, 14 A. 81 S. E. 796; **Clark**, 117/254, 43 S. E. 853; **Joiner**, 119/315, 46 S. E. 412; **McCarty**, 23 A. 80, 97 S. E. 446.

When an admission, and when not. **Lumpkin**, 125/24, 53 S. E. 810; **McElroy**, 125/40, 53 S. E. 759; **Chapman**, 109/159, 34 S. E. 369; **Brantley**, 115/230, 41 S. E. 695; **Simmons**, 115/576, 41 S. E. 983.

As admission (failure to answer letter in reasonable time). **Improved Fertilizer Co.**, 15 A. 611, 84 S. E. 132.

Of party after his statement was denied by another person; admissibility of testimony. **Smith**, 23 A. 541, 99 S. E. 142.

After companion's declaration, admission by, of participation in homicide. **Davis**, 114/109, 39 S. E. 906.

Admission by, when incriminating statement made; what must appear. **Jones**, 2 A. 433, 58 S. E. 559.

Admission by, when circumstances require answer or denial, in case of homicide. **Nunn**, 143/451, 85 S. E. 346.

Admission by, only where statement made fairly and reasonably calls for

answer. **Cranshaw**, 1 A. 373, 58 S. E. 222.

Admission by; different parts of the same conversation admissible, to disprove acquiescence. **Mitchem**, 128/407, 57 S. E. 721.

Statement in presence of accused by his father, as to homicide, when no error in receiving. **Woods**, 137/85, 72 S. E. 908.

Amounted to confession. **Thompson**, 147/745, 95 S. E. 292.

Silently acquiesced in by one suffering from injury may amount to admission. **Holston**, 116/656, 43 S. E. 29.

By one accused of murder, no error in admitting. **Waycaster**, 136/95, 70 S. E. 883.

Of fact justifying the act admitted, admission coupled with, no confession of crime; conviction based solely thereon, set aside. **Wall**, 5 A. 308, 63 S. E. 27.

Statute of frauds, admission in plea taking case out of. **Marks**, 8 A. 559, 69 S. E. 1131.

Admission of contract did not hinder plea of. **Douglass**, 110/159, 35 S. E. 339.

Admission in correspondence, by failing to deny agreement, thus taking it out of. **Capital City Brick Co.**, 5 A. 442, 63 S. E. 562.

Statute of limitations, what admission of indebtedness necessary, to relieve from bar of. **Thornton**, 119/50, 45 S. E. 785.

Stenographic report of confessions; long-hand transcript admissible, when. **Lowe**, 125/55, 53 S. E. 1038.

Subsequent confession, whether made under previous influences still operating, a question of fact. **Elder**, 143/363, 85 S. E. 97; **Milner**, 124/86, 52 S. E. 302.

Surety, admission of principal, when admissible against. **Chicago Portrait Co.**, 6 A. 425, 65 S. E. 161. Admission by entry on account book of bank, showing it treated a party as surety, not principal maker of note. **Patterson**, 8 A. 492, 70 S. E. 77.

Surprise of party absent from trial, by testimony as to admission, no ground for

new trial. **McBride**, 125/516, 54 S. E. 674.

Tax return as admission. **McLendon**, 3 A. 206, 59 S. E. 718; **Ivey**, 124/160, 52 S. E. 436, 110 Am. St. R. 160.

Effect of, as admission of value. **W. & A. R. Co.**, 129/526, 59 S. E. 266; **City of Atlanta**, 19 A. 694, 92 S. E. 28. Taxpayer allowed to show, in rebuttal, that the valuation therein was fixed by city assessors, not by himself. *Id.*

Omission from, material as admission in nature of disclaimer. **Tanner**, 147/176, 92 S. E. 1005.

Testator, declarations of, on issue of revocavit vel non. **Kimsey**, 120/413, 47 S. E. 899.

Declarations of, made after signing will, effect of, as evidence. **Underwood**, 111/329, 86 S. E. 788.

Declaration of, admissible for what purpose on issue as to probate of will. **Penn.**, 144/67, 86 S. E. 233.

Statement of, to draftsman of will, admissible as explanatory of small bequest to caveatrix. **Gordon**, 141/347, 80 S. E. 1007.

Declarations of, after date of alleged will, that if he signed it he did not know what he was doing, admissible merely to show his mental condition at the time it purported to have been signed. **Credille**, 123/673, 51 S. E. 628, 107 Am. St. R. 157.

Competency of declarations of, how limited. **Young**, 110/10, 35 S. E. 278.

Declarations by, of what character and formality to rebut presumption of law. **Chandler**, 147/561, 94 S. E. 995.

Third person, declarations of, to whom defendant referred plaintiff for information, admitted as evidence against defendant. **Hill**, 19 A. 334, 91 S. E. 434.

Declaration of, when not admissible. **Bishop**, 125/29, 53 S. E. 807; **Bundrick**, 125/753, 54 S. E. 683.

Admission of, that he was owner of liquor found on defendant's premises, excluded. **Cook**, 22 A. 790, 97 S. E. 258.

Admissions of, as to title, when admissible. **Atlantic Compress Co.**, 15 A. 747, 84 S. E. 155.

Threat, admissibility of declaration in nature of. **Sanders**, 113/270, 38 S. E. 841.

By deceased, rebuttal of evidence as to, by proof of his subsequent declarations of peaceful intent, communicated to his slayer. **Taylor**, 121/348, 49 S. E. 303.

Time and place, confession receivable, though not in terms stating. **Cook**, 124/658, 53 S. E. 104. Confessions made at different times admitted. **Lowe**, 125/55, 53 S. E. 1038.

Title; admissibility of declarations of defendant in fl. fa. as to. **Smith**, 13 A. 837, 80 S. E. 1051. In claim case, when admissible. **Smiley**, 123/39, 50 S. E. 927. After levy, not admitted. **Walton**, 11 A. 159, 74 S. E. 1006. Though offered for impeachment. **Luke**, 4 A. 538, 62 S. E. 110.

Admission against, by plea in different suit, admissible. **Mays**, 134/870, 68 S. E. 738.

Declarations as to, by vendor out of possession, not received. **Daniel**, 106/91, 31 S. E. 734.

Declarations as to, by debtor in possession of property, where he has made a conveyance of it which his creditor is attacking as fraudulent, admissibility of. **Banks**, 119/800, 47 S. E. 332.

Declarations as to, by agent who was former owner, admissibility of. **Sweeney**, 119/76, 81, 46 S. E. 76, 100 Am. St. R. 159.

Deceased grantor's declarations as to, inadmissible in favor of grantee, when. **Hollis**, 103/75, 29 S. E. 482.

Admissions of third persons as to; when admissible. **Atlantic Compress Co.**, 15 A. 747, 84 S. E. 155.

Declaration of defendant in possession of land, in favor of, when not admissible. **Fullbright**, 131/342, 62 S. E. 188.

Declarations of deceased as to, admissibility of. **Dozier**, 117/786, 790, 45 S. E. 61.

Title—(Continued).

Declaration in favor of, admissible to prove that possession of declarant was adverse. *Bowman*, 133/49, 65 S. E. 156.

Declaration in disparagement of, admissible against successor of declarant. *Bowman*, 133/49, 65 S. E. 156.

Of declarant, declarations disparaging, admissible against his privies, and for or against strangers. *Hall*, 146/815, 92 S. E. 536; *Callaway*, 147/17, 92 S. E. 538; *Allen*, 146/204, 91 S. E. 22.

Declaration against; statement not construed as abandonment of claim to land. *Whatley*, 139/155, 76 S. E. 1025.

Admission of, in another, by accepting bill of sale from him; when no estoppel. *Evans*, 111/05, 36 S. E. 426.

Admission of, did not result from compromise agreement. *Moore*, 126/44, 54 S. E. 814. That defendant claims under common grantor raises presumption of title in that grantor. *Garbutt Lumber Co.*, 126/172, 54 S. E. 944.

Admission in disparagement of, receivable. *Tarver*, 132/805; 65 S. E. 177, 24 L. R. A. (N. S.) 1161.

Admission dispensed with proof of, and rendered immaterial any objection to deeds offered. *Town of Wrens*, 129/755, 59 S. E. 776.

Conduct which might be treated as admission of, in another. *State*, 21 A. 320, 94 S. E. 325.

Admission as to, by decedent, against his interest, not objectionable as hearsay. *Ford*, 4 A. 468, 61 S. E. 881.

Admission against, by husband of prescriber, under whom she claimed, when not admissible. *Shingler*, 135/666, 669, 70 S. E. 563.

Admission of, in plaintiff's grantor, made where defendant claims under that grantor. *Deen*, 128/265, 57 S. E. 427.

Admission of better title, by abandonment, may be implied. *Tarver*, 132/805, 65 S. E. 177, 24 L. R. A. (N. S.) 1161; *Williamson*, 110/55, 35 S. E. 301.

Admission of no title not made by
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creditor's surrender of assigned collateral to trustee in bankruptcy without reassignment. *Traders Co.*, 118/381, 45 S. E. 426.

Declaration after title passed, inadmissibility of; and when not relevant to issue. *Slappey*, 136/692, 71 S. E. 1075.

Vendor, declarations of, impugning integrity of conveyance, when not admissible. *Manning*, 135/598, 69 S. E. 1126.

Declarations of, after giving up possession, not in presence of vendee, inadmissible. *Daniel*, 106/91, 31 S. E. 734.

Verdict based on admissions, upheld. *Burk*, 119/38, 45 S. E. 732; *Linder*, 119/41, 45 S. E. 732.

Voluntary, confession must be. *Mill*, 3 A. 414, 60 S. E. 4. Admission or confession received, where no evidence of compulsion, undue influence, etc. *Miller*, 124/86, 52 S. E. 302; *Green*, 124/344, 52 S. E. 431. No error in admitting confession. *Swain*, 135/219, 69 S. E. 170. Confession admissible over objection that accused had been caught by posse and dogs, etc. *Smith*, 139/230, 76 S. E. 1016. Confession voluntary, not excluded, though accused in custody, handcuffed, in woods at night. *Wilburn*, 141/510, 81 S. E. 444. Duty of jury to determine whether made freely or whether induced. *Waycaster*, 136/101, 70 S. E. 883.

Confession not voluntary, and induced by hope of benefit or fear of injury, not admissible. *Johnson*, 1 A. 129, 57 S. E. 934. Fear or hope as inducing, or free and voluntary. *Morgan*, 120/503, 48 S. E. 238.

Weight of confession for jury, not for court's charge. *Walker*, 118/34, 44 S. E. 850; *Calvin*, 118/73, 44 S. E. 848.

Of admissions, former decisions as to, discussed. *Phoenix Ins. Co.*, 113/426, 38 S. E. 992.

Wife, declarations of, as to having been beaten by husband, proof of, when admissible on trial of husband. *Joiner*, 119/315, 46 S. E. 412.

Declaration of, that she killed, not admissible on trial of husband for the homicide *Lynn*, 140/392, 79 S. E. 29.

Wife—(Continued).

Declaration of slayer of, when not admissible as part of *res gestæ*. *Lyles*, 130/295, 60 S. E. 578.

Of defendant, declarations of, five or ten minutes before he committed homicide and not in his hearing, not admissible. *Brown*, 17 A. 300, 86 S. E. 661.

Charged with murder of her husband, admission of (as to her immoral relations with another), not admissible on her trial, when. *Hightower*, 14 A. 247, 80 S. E. 684.

Will, admissibility of declaration of heir as to existence and loss of. *Scott*, 113/795, 39 S. E. 500, 84 Am. St. R. 263.

Withdrawn, admission may be, and adversary put on proof, if not misled. *Hutchinson*, 145/325, 89 S. E. 208.

Witness, declarations made by, admissible to contradict him, not to prove the thing declared. *Jones*, 110/373, 35 S. E. 690.

Admission of, used, on proper foundation, to impeach him; not as substantive evidence that he did the act for which another person is on trial. *Perdue*, 126/112, 54 S. E. 820.

Admission of, after trial, that his testimony was false, not cause for setting aside conviction. *Rogers*, 129/590, 59 S. E. 288.

Admission of, before coroner's jury, consideration of, as bearing on her credibility. *Wright*, 141/475, 81 S. E. 214.

Unlawful procurement of confession does not render confessor incompetent as, on trial of his alleged associates in the criminal enterprise. *Rawlins*, 124/32, 52 S. E. 1.

Declaration of deceased witness to paper propounded, that testatrix had made no will, received in reply to evidence of his handwriting. *Mobley*, 134/125, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1004.

Admission of truth of what absent witness would testify, effect of. *Watson*, 118/68, 44 S. E. 803.

Wounded man, declaration by, to hos-

pital surgeon, a few minutes after attack, not admissible. *Hunter*, 147/823, 95 S. E. 668. When admissible. *Herrington*, 130/307, 60 S. E. 572. Dissent: declaration irrelevant. *Ib.* 319. Declarations upon receiving mortal wound, when admissible. *Goodman*, 122/111, 49 S. E. 922.

Written admission of membership in partnership, effect of. *Stewart*, 102/836, 30 S. E. 264.

That consideration of note was received, effect of. Subject to denial or explanation. *Crooker*, 3 A. 194, 59 S. E. 722. As to indebtedness by account for goods. *Wilcox*, 3 A. 740, 60 S. E. 357.

3. BURDEN OF PROOF.

Abatement of action, burden of proof of plea in. *Bland*, 134/74, 67 S. E. 427.

Accidental, burden of proof that death was not. *Ga. L. Ins. Co.*, 12 A. 863, 78 S. E. 1115.

Administration, burden of proof of lack of. *Wilson*, 127/319, 56 S. E. 457.

Administrator, burden on party attacking returns of, after their allowance. *Peavy*, 10 A. 507, 73 S. E. 756.

Burden of proof of no necessity for sale by, on heir sued for recovery of possession of land. *Park*, 124/1072, 53 S. E. 568.

Burden of proof on, to show correctness of his inventory of assets. *American Surety Co.*, 2 A. 646, 58 S. E. 1116.

Burden of proof on, suing for land, to show want of final settlement by predecessor. *Hodges*, 140/572, 79 S. E. 462.

Burden of proof on issue raised by claim interposed on application of, for leave to sell land. *Simmons*, 138/534, 75 S. E. 626.

Burden in suit against, for accounting and settlement. *Adams*, 113/824, 39 S. E. 291.

Burden of proof of adverse possession, on plaintiff seeking to eject pur-

chaser at sale by. **Harris**, 114/295, 40 S. E. 271.

Admission as affecting burden of proof.

Hunter, 113/140, 38 S. E. 406; **Phoenix Ins. Co.**, 113/424, 433, 38 S. E. 992; **Melton**, 113/603, 38 S. E. 958; **Brunswick R. Co.**, 113/482, 39 S. E. 551, 61 L. R. A. 13; **Walker**, 112/412, 37 S. E. 749. When burden must be expressly assumed by defendant who has admitted a prima facie case in his plea. **Northington**, 118/586, 45 S. E. 447. Burden not shifted by admissions merely oral. **Dorough**, 108/812, 34 S. E. 168. Not shifted by admission in plea here. **Lazenby**, 20 A. 56, 92 S. E. 391. Error to place burden of proof upon party as to an admitted fact. **Phoenix Ins. Co.**, 107/111, 32 S. E. 948. Burden of proof on defendant admitting prima facie case and setting up affirmative defense. **Branch**, 22 A. 52, 95 S. E. 476; **Wilson**, 23 A. 94, 97 S. E. 558; **Carolina Cement Co.**, 9 A. 555, 71 S. E. 942.

Affidavit of illegality, burden of proof as to matters set up in. **McLeod**, 14 A. 77, 80 S. E. 207; **James**, 17 A. 578, 87 S. E. 842; **Thompson**, 139/310, 77 S. E. 166; **Dockins**, 6 A. 680, 65 S. E. 689.

Affirmative defense, burden of proof of. **Parks**, 142/392, 83 S. E. 100; **Lamb**, 143/180, 84 S. E. 439; **Stewart**, 135/637, 70 S. E. 325; **Widincamp**, 135/644, 70 S. E. 566. Burden of proof of affirmative plea, or of plea in nature of confession and avoidance. **Mill-edgeville Co.**, 138/470, 75 S. E. 604.

Agent, burden of proof in suit against, for accounting. **Dodge**, 118/883, 45 S. E. 667.

Burden of proof of authority of. **National Bank**, 142/663, 82 S. E. 526, L. R. A. 1915B, 1116. To collect. **Walton Guano Co.**, 111/114, 36 S. E. 469. To receive payment. **Bank**, 101/104, 28 S. E. 168.

Burden of proof, of ignorance of duality of agency. **Red Cypress Co.**, 118/876, 45 S. E. 674. Burden of proof that agent occupying dual relation dealt with himself alone, in mak-

ing contract between corporation and partnership. **Taylor**, 3 A. 288, 59 S. E. 844.

Burden of proof as to agency, where one accused of unlawful liquor-selling sets up that he was agent for buyer. **Cunningham**, 105/679, 31 S. E. 585.

Alibi, burden of proof as to. **Pyles**, 12 A. 667, 78 S. E. 144; **Lewis**, 11 A. 102, 74 S. E. 708; **Ransom**, 2 A. 826, 59 S. E. 101; **Smith**, 3 A. 803, 61 S. E. 737; **Bone**, 102/387, 30 S. E. 845; **Henderson**, 120/506, 48 S. E. 167; **Jones**, 130/274, 60 S. E. 840; **Hunter**, 136/103, 104, 70 S. E. 643.

When sufficient to overcome proof of guilt excluding reasonable doubt. **Montford**, 144/583, 87 S. E. 797.

Allegation which plea neither admitted nor denied, burden of proof as to, on plaintiff. **Black**, 7 A. 507, 67 S. E. 389.

Alteration of note, burden of proof as to. **Mozley**, 109/182, 34 S. E. 310.

Amount, burden of furnishing data sufficiently specific for estimating. **Branch**, 9 A. 700, 71 S. E. 1123; **Nat. Refrigerator Co.**, 9 A. 725, 72 S. E. 191.

Animal, burden on custodian of, to explain injury to it. **Tally**, 5 A. 480, 63 S. E. 543.

Arrest without a warrant, burden of proof of circumstances authorizing. **Franklin**, 118/860, 45 S. E. 698.

Attachment case, burden of proof in, as to seizure and notice. **Hiles Carver Co.**, 109/181, 34 S. E. 353.

Attorney, burden on, to prove fairness of contract with client. **Mann**, 145/268, 88 S. E. 968. Burden of proof of attorney's want of authority. **Big-ham**, 114/459, 40 S. E. 303.

Auditor's report, burden of proof, to overcome presumption of correctness of, upon exceptor. **Adair**, 136/1, 70 S. E. 578.

Baggage company, burden of proof in suit against, for loss of trunk; not on plaintiff, to show loss, after showing he delivered railroad check to defendant and took receipt for it. **Atlanta Baggage Co.**, 4 A. 407, 61 S. E. 844.

Bailee, burden on, as to diligence, in case of loss. *Moultrie Compress Co.*, 13 A. 617, 79 S. E. 589; *A. C. L. R. Co.*, 13 A. 753, 79 S. E. 947; *Concord Works*, 112/242, 37 S. E. 392. On bailee, as to diligence (blacksmith sued for injury to horse). *Johnson*, 4 A. 633, 62 S. E. 152.

Bankruptcy proceedings, burden of proof on debtor, to show that creditor had notice or actual knowledge of, before judgment of discharge. *Collins*, 3 A. 238, 59 S. E. 727.

Bona fides of holder of stolen note, burden of proof as to. *Walden*, 4 A. 534, 61 S. E. 1127.

Burden of proof of, on plaintiff as holder of note sued on, after proof of fraud or duress in its procurement, or of illegal consideration; not upon proof of mere failure of consideration. *Sheffield*, 2 A. 221, 58 S. E. 386.

Bond of county treasurer, burden of proof, on issue of liability on. *Mason*, 104/36, 30 S. E. 513.

Broker, burden of proof in suit by, to recover commission for effecting sale of real estate. *Payne*, 139/283, 289, 77 S. E. 32.

Cancellation of note for fraud, burden of proof in proceeding for; effect of defendant's assumption of. *Armstrong*, 105/230, 31 S. E. 158.

Carrier, burden on, to show that damage was within limitation of liability, and not occasioned by his negligence. *Carter*, 3 A. 35, 59 S. E. 209; *Atlanta R. Co.*, 3 A. 641, 60 S. E. 355. See *Fain*, 3 A. 736, 60 S. E. 359.

When sued for loss of goods shipped "released," to show that the loss was within the exemption, and not due to carrier's negligence. *Ga. So. R. Co.*, 121/231, 48 S. E. 807.

To establish superiority of title to which he has yielded over that of consignor named in bill of lading. *Atlantic R. Co.*, 1 A. 22, 57 S. E. 973.

To establish defense that damage was due to inherent vice or natural deterioration. *Southern Express Co.*, 7 A. 331, 66 S. E. 960.

To account for default, where baggage not delivered on demand. *Southern Ry. Co.*, 123/474, 51 S. E. 388.

As to loss of goods and absence of negligence. *Southern Ry. Co.*, 1 A. 649, 57 S. E. 933; *Ohlen*, 2 A. 323, 58 S. E. 511.

As to goods damaged in its possession. *Cincinnati Ry. Co.*, 3 A. 401, 60 S. E. 8.

As to vessel being seaworthy, and properly manned, equipped, and supplied. *Levy*, 130/581, 61 S. E. 484.

To show diligence as to carriage of goods in reasonable time. *W. & A. R. Co.*, 139/545, 77 S. E. 802.

As to absence of negligence on part of carrier setting up act of God. *Charleston & C. Ry. Co.*, 142/343, 32 S. E. 893. When burden as to lost goods, shifted to last of connecting carriers. *Way*, 132/677, 64 S. E. 1066.

Certiorari, burden of proof of service of notice of sanction of. *Johnson*, 2 A. 182, 58 S. E. 415.

Chain-gang presumed lawful; burden of proof to contrary, on him alleging its illegality. *Taylor*, 108/384, 34 S. E. 2.

Change of condition, burden of proof as to. *Marshall*, 20 A. 424, 93 S. E. 98.

Charge to jury on burden of proof. *Brandon*, 133/480, 66 S. E. 247.

As to what plaintiff must show by evidence did not restrict him to that introduced by himself. *Brunswick R. Co.*, 129/176, 58 S. E. 705.

Burden of proving defense not placed on accused by, in this case. *Helms*, 138/827, 76 S. E. 353.

Cheating, etc., burden of proof of loss, on State, in prosecution for. *Denney*, 2 A. 146, 58 S. E. 318.

Child, burden of proof of parent's unfitness to retain custody of. *Walker*, 1 A. 74, 57 S. E. 903. Burden of proof of contract, express of implied, on child seeking to recover for services rendered to foster parent. *Howard*, 134/691, 68 S. E. 586, 29 L. R. A. (N. S.) 294, 20 Ann. Cas. 392.

Claim case, burden of proof in. *Dawson Grocery Co.*, 137/846, 74 S. E. 796;

Taylor, 139/797, 77 S. E. 1062; **Nussbaum**, 9 A. 58, 70 S. E. 259; **Ford**, 117/213, 43 S. E. 483; **Lamkin**, 103/636, 30 S. E. 596; **American National Bank**, 124/863, 53 S. E. 268; **Hirsh**, 125/657, 54 S. E. 678.

Burden in, as to possession. **Howell**, 121/461, 49 S. E. 299.

Burden where claimant is in possession. **Southern Mining Co.**, 107/264, 33 S. E. 73. Where claimant admits possession. **Melton**, 113/603, 38 S. E. 958.

Burden on claimant. **Eason**, 108/110, 33 S. E. 873.

Burden, how shifted. **Thompson**, 107/382, 33 S. E. 689; **Sasser**, 8 A. 824, 70 S. E. 157. Admission of claimant that defendant had title on a date prior to the judgment, effect of. **Coleman**, 105/163, 31 S. E. 424. How shifted to claimant. **Stephens**, 147/410, 94 S. E. 245. Assumed by claimant; objection first made after verdict, too late. **Engram**, 147/416, 94 S. E. 245.

Effect of claimant's, admission and assumption of burden of proof, in dispensing with evidence for plaintiff. **Manley**, 128/350, 57 S. E. 705.

Burden assumed by admitting prima facie case for levy was not sustained by claimant's testimony. **Sexton**, 144/192, 537.

Proof of title or possession in order to shift burden. **Allen**, 136/550, 71 S. E. 896.

Burden on plaintiff, as to identification of property as defendant's. **Smith**, 105/717, 31 S. E. 754.

Burden of claimant to show superior title or interest; not mere want of title in defendant in execution or that property is not subject. **Deariso**, 3 A. 580, 60 S. E. 330.

Collateral security, burden as to diligence in collection of claims held as. **Mauck**, 113/242, 38 S. E. 845. Burden of pleading and proving that collateral was more than debt secured by it, on maker of note. **Linderman**, 143/366, 85 S. E. 101.

Consideration, burden of proof of failure of. **DeLay**, 141/406, 81 S. E. 195; **Gallagher**, 115/420, 41 S. E. 613. Or of extent of partial failure. **Byck**, 3 A. 387, 59 S. E. 1126; **Webb**, 3 A. 639, 60 S. E. 334; **Muller**, 141/376, 377, 81 S. E. 127. Burden of proof on defendant's admitting execution of note and mortgage, and setting up failure of consideration. **Swanson**, 105/471, 30 S. E. 642. Burden of proof on parties seeking to show that note and mortgage under seal, reciting valuable consideration, had none. **Weaver**, 109/310, 34 S. E. 680.

Contract, burden on party attacking, to show its invalidity. **Dorough**, 118/180, 45 S. E. 22; **Weichselbaum**, 127/417, 56 S. E. 413; **Wright**, 137/52, 72 S. E. 412; **Watson**, 127/298, 56 S. E. 459. Burden of proof that public duties make performance of private contract impossible. **Atlanta R. Co.**, 130/1, 60 S. E. 177, 15 L. R. A. (N. S.) 594, 124 Am. St. R. 151, 14 Ann. Cas. 439.

Converter of note, burden of proof on, to show that it was of less value than its face amount. **Citizens Bank**, 132/774, 65 S. E. 81.

Corporation, burden of proof of authority of president to make its note to himself. **Cap. C. Co.**, 2 A. 771, 59 S. E. 92. Burden of proof, on defendant, that character of plaintiff corporation is other than what it purports to be. **Burns**, 108/184, 33 S. E. 856; **Morgan**, 108/185, 33 S. E. 964. Burden of proof of right to exclusive use of name, on corporation asserting. **Good Samaritans**, 139/835, 78 S. E. 336. Burden of proof that defendant participated in management of corporate affairs. **Cadwalader**, 137/142, 72 S. E. 903.

Damage; burden of proof that it might have been decreased by plaintiff. **Realty Co.**, 4 A. 402, 61 S. E. 832.

Deed, burden of proof that signature to, was authorized by maker who could not write, on him who sets up such fact. **Hansen**, 132/649, 64 S. E. 800.

- Burden of explaining entry on back of, invalidating it as conveyance of title.** *McBrayer*, 122/246, 50 S. E. 95.
- Defendant's better facilities for proof, or possession of means of proof, as affecting burden.** *Southern Life Ins. Co.*, 9 A. 507, 71 S. E. 742.
- Definition of burden of proof; and rule as to.** *Hyer*, 12 A. 837, 843, 79 S. E. 58.
- Demand, burden of proving, in lien foreclosure.** *Shealey*, 8 A. 643, 70 S. E. 100.
- Destroyed paper, burden of proof and preponderance to overcome presumption as to.** *Wood*, 147/572, 94 S. E. 1021.
- Diligence, burden of proving.** *Ga. Ry. Co.*, 122/310, 50 S. E. 92; *Ala. R. Co.*, 145/190, 88 S. E. 939. **Diligence or negligence.** *Central Ry. Co.*, 124/322, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 110 Am. St. R. 170, 4 Ann. Cas. 128; *Aug. R. Co.*, 124/386, 52 S. E. 444; *Southern Ry. Co.*, 124/681, 53 S. E. 203; *Stewart*, 124/978, 53 S. E. 450.
- Disability to sue, burden of proof and presumption as to.** *Arnold*, 122/73, 49 S. E. 812.
- Donor, burden of proof of fraud or mental incapacity of.** *Philpot*, 3 A. 742, 60 S. E. 480.
- Doubt arising from conflict decided on preponderance of evidence.** *Bryant*, 145/531, 89 S. E. 512. **Burden of proof not carried by evidence that leaves the matter in doubt or equally balanced.** *Atl. R. Co.*, 132/197, 63 S. E. 834.
- Ejectment, burden of proof in, plaintiff claiming under deed to secure debt.** *Hamilton*, 126/28, 54 S. E. 926.
- Election, public, burden of proof of grounds of attack upon validity of.** *Mabry*, 133/831, 67 S. E. 91; *Ray*, 148/203, 96 S. E. 209. **Burden of proving disqualification of manager.** *Crawley*, 108/136, 33 S. E. 948.
- Equitable title, burden of proof of, and notice to subsequent purchasers.** *Mays*, 134/870, 871, 68 S. E. 738.
- Error, burden of showing, on plaintiff in error.** *Prior*, 130/671, 61 S. E. 546.
- Estoppel in pais operating against subsequent purchaser without notice, burden of proof of.** *Coursey*, 141/66, 80 S. E. 462.
- By judgment, burden of proving plea of.** *Draper*, 122/234, 50 S. E. 113, 69 L. R. A. 483, 2 Ann. Cas. 650.
- As to issues involved and determined, burden on party relying on judgment as.** *Harris*, 144/519, 87 S. E. 661.
- Exception from statute, burden of proof that accused was of class within.** *Kitchens*, 116/849, 43 S. E. 256.
- Execution of note, burden of proving, on plaintiff, where alteration was pleaded, under oath.** *Thompson*, 8 A. 24, 68 S. E. 518.
- Of deed, when burden of proving, not on party offering.** *Leverett*, 6 A. 91, 64 S. E. 317; *McArthur*, 107/797, 34 S. E. 205.
- Fertilizer, burden of proof as to whether ingredients correspond with guaranteed analysis on package of.** *Arlington*, 13 A. 562, 79 S. E. 476; *Keaton*, 13 A. 645, 79 S. E. 754. **Not legally tagged.** *Young*, 3 A. 204, 59 S. E. 717. **Not branded as required by law.** *Grimer*, 4 A. 232, 61 S. E. 147.
- Fiduciary relation, burden of proof of.** *Crawford*, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932; *Jones*, 134/857, 860, 68 S. E. 729, 137 Am. St. R. 276.
- Forgery of deed or will, burden of proof on issue of.** *Chatman*, 127/360, 56 S. E. 439; *Smith*, 127/483, 56 S. E. 640.
- Of deed, burden of proof on issue of, when on party alleging, and when on party offering deed.** *Haithcock*, 145/84, 88 S. E. 550. **Burden of proving genuineness of deed, after filing of statutory affidavit of forgery.** *James*, 147/598, 95 S. E. 11. **What evidence necessary to carry burden.** *Strickland*, 142/120, 82 S. E. 531.
- Burden on person offering certified copy of recorded deed, to show existence and genuineness of original, when met by affidavit of forgery.** *Bentley*, 119/530, 46 S. E. 645.

Burden of proof on issue of forgery on party asserting genuineness of deed; though tried together with other issues of the case. *Sapp*, 131/434, 62 S. E. 529.

Fraud inducing execution of deed, burden of proof of, to support prayer for cancellation. *Crawford*, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932; *Jones*, 134/857, 860, 68 S. E. 729, 137 Am. St. R. 276.

Burden of proof on plaintiff seeking to reopen settlement by note, on ground of. *Hale*, 133/631, 66 S. E. 781.

Burden of proof, where presumption of, raised against accused by penal law. *Griffin*, 142/637, 83 S. E. 540, L. R. A. 1915C, 716, Ann. Cas. 1916C, 80.

Burden of proving fairness and freedom from fraud; how shifted to grantee in conveyance. *Hubbard*, 148/238, 96 S. E. 327.

Game law, burden of proof, in prosecution under, that deer was wild. *Crosby*, 121/198, 48 S. E. 913. In action for libel. *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103.

Garnishment, burden of proof on plaintiff in, upon traverse of answer. *Lee*, 2 A. 337, 58 S. E. 520. Burden of proof as to exemption from. *Steele*, 109/791, 35 S. E. 167. Burden on party asserting insufficiency of garnishment bond. *Stephens*, 8 A. 639, 70 S. E. 55.

Gift, burden of proof of essentials of. *Ellington*, 127/86, 56 S. E. 134, 119 Am. St. R. 320.

Good faith; burden of proof as to. *Ga. Life Ins. Co.*, 12 A. 857, 78 S. E. 1115.

Guarantor, burden on one suing, to prove non-payment. *Armour*, 9 A. 707, 712, 72 S. E. 168.

Guilt of accused, burden of proving. *Mize*, 135/295, 69 S. E. 173.

Headright warrant, burden of proof on issue by caveat to application for. *Roberts*, 136/473, 71 S. E. 786.

Heirs, burden of proving testacy of decedent, in defense to suit by. *Allen*, 145/654, 89 S. E. 821. Burden of

proving heirship of plaintiff. *Price*, 143/671, 85 S. E. 870.

Homestead, burden of proof, that waiver antedated setting apart of, on levying creditor. *Sigman*, 112/571, 37 S. E. 894.

Homicide, burden of proving justification or mitigation of. *Delk*, 135/312, 69 S. E. 541, 22 Ann. Cas. 105; *Mann*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934; *Beach*, 138/266, 75 S. E. 139; *Johnson*, 130/27, 60 S. E. 160; *Burley*, 130/344, 60 S. E. 1006; *White*, 125/256, 54 S. E. 188.

Husband and wife, burden of proof of fairness of transaction between, attacked for fraud. *Gray*, 139/776, 78 S. E. 127; *Adams*, 147/470, 94 S. E. 568. Burden of proof on party asserting an agreement, pending illicit cohabitation, thereafter to be husband and wife. *Drawdy*, 130/161, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Inconclusive circumstances, burden of proof not carried by mere scintilla of. *Ga. Ry. Co.*, 1 A. 714, 57 S. E. 1076.

Indorsement, burden of proof as to. *Ruby*, 19 A. 516, 91 S. E. 939; *Bank of Norwood*, 19 A. 710, 92 S. E. 225; *Gray*, 9 A. 356, 71 S. E. 605; *Bruce*, 134/367, 67 S. E. 819.

Infant, burden of proof of capacity of, to commit crime. *Singleton*, 124/136, 52 S. E. 156; *Brown*, 12 A. 722, 78 S. E. 32. Burden of proof of conditions rendering infant liable on contract not made for necessities. *James*, 3 A. 568, 60 S. E. 329; *McAllister*, 3 A. 731, 60 S. E. 355. See *Mauldin*, 3 A. 800, 60 S. E. 358.

Insanity, burden of proof of. *Cooper*, 2 A. 731, 59 S. E. 20; *Hobbs*, 8 A. 54, 68 S. E. 515; *Wilson*, 9 A. 274, 286, 70 S. E. 1128; *Polk*, 148/35, 95 S. E. 988; *Brown*, 148/265, 96 S. E. 435.

Insurance, burden of proof as to facts constituting exception to policy. *Ga. Life Ins. Co.*, 12 A. 857, 78 S. E. 1115.

Burden on insurer to show want of title in insured. *Gate City Ins. Co.*, 5 A. 585, 63 S. E. 638; *American Ins. Co.*, 5 A. 733, 64 S. E. 304.

Insurance—(Continued).

Burden of proof of ownership, when on insured, and when on insurer, in suit on policy. *Morris*, 106/461, 32 S. E. 595; *Morris*, 106/472, 33 S. E. 430.

Burden of proving waiver of condition under policy. *Liverpool Ins. Co.*, 145/716, 89 S. E. 817.

Burden on insurer to show that death of insured was from suicide. *Mut. L. Ins. Co.*, 9 A. 798, 804, 72 S. E. 295.

Burden of proof in suit on accident policy. *Travelers Ins. Co.*, 107/584, 34 S. E. 113.

Burden of proving compliance with terms of contract for reviewing lapsed policy. *Rome Ins. Co.*, 142/253, 82 S. E. 641.

Burden of proof as to whether injury was from a cause covered by policy. *Gaynor*, 12 A. 601, 77 S. E. 1072.

Insured, alleging compliance with conditions of policy, did not carry burden by contradictory and uncertain testimony. *Bussey*, 23 A. 709, 99 S. E. 236.

When burden on insurance company, on question as to compliance with conditions of policy. *Southern Life Ins. Co.*, 9 A. 503, 504, 71 S. E. 742.

Intent to defraud, burden of proof to rebut presumption of. *Barnes*, 3 A. 333, 59 S. E. 937. Burden of proof of honest intent, on one undertaking to destroy innkeeper's lien on baggage. *Smith*, 141/486, 81 S. E. 220, Ann. Cas. 1915C, 999.

Intervenor, burden of proof on. *Spencer*, 129/627, 59 S. E. 274; *Moore*, 107/139, 32 S. E. 835. Plaintiff not relieved of burden of proof, by pleadings of. *Eastmore*, 113/637, 39 S. E. 105.

Judgment in favor of one described as executor, burden of proof as to ownership of. *Dozier*, 117/786, 45 S. E. 61.

Burden of proving invalidity of, on mortgage foreclosure. *Redding*, 144/100, 86 S. E. 241.

Jurisdiction, burden of proof of averments in plea to. *Pyron*, 120/1060, 48 S. E. 434.

Jury, burden of State to show accused was uninjured by misconduct of. *Smith*, 122/154, 50 S. E. 62.

Knowledge of defendant, burden of proving matters peculiarly in. *Garrett*, 104/86, 30 S. E. 685. When burden on party with better means of knowledge or proof. *Hyer*, 12 A. 837, 843, 79 S. E. 58.

Law providing that proof of specified facts shall make a prima facie case of guilt and shift burden, validity of. *Kunsburg*, 147/591, 95 S. E. 12.

Laborer, burden of proof on, to establish lien. *Howell*, 3 A. 60, 59 S. E. 316.

Landlord, burden of proof on, as to maturity of rent. *Holt*, 111/810, 35 S. E. 703.

Levy officer has burden of proof, on rule, to show that no injury resulted from failure to levy. *Hixon*, 2 A. 680, 58 S. E. 1120.

License, burden of proof as to. *Blocker*, 12 A. 81, 76 S. E. 784; *Williams*, 12 A. 84, 76 S. E. 785; *Sims*, 12 A. 363, 77 S. E. 188; *Russell*, 12 A. 557, 77 S. E. 829.

Liquor, when burden on defendant in prosecution for sale of. *Langston*, 9 A. 449, 71 S. E. 592; *Cheatwood*, 9 A. 828, 72 S. E. 284; *Ragan*, 9 A. 872, 72 S. E. 441; *Braswell*, 9 A. 879, 72 S. E. 445; *McGovern*, 11 A. 267, 74 S. E. 1101.

Burden after showing possession of, under act of 1915. *Hendry*, 147/263, 93 S. E. 413.

Malt, burden on one tried for selling, to show it was not intoxicating. *Stoner*, 5 A. 717, 68 S. E. 602.

Supply, burden on accused as to source of, on charge of illegal sale. *Highsmith*, 7 A. 611, 67 S. E. 677; *Mack*, 116/546, 42 S. E. 776.

Marriage, burden of proof as to. *Norman*, 113/126, 38 S. E. 317.

Materialman asserting lien, burden on, as to contract price of real-estate improvement. *Stevens*, 122/317, 50 S. E. 100.

Burden of proof of defense to foreclosure of materialman's lien. *Prince*, 124/884, 53 S. E. 761, 4 Ann. Cas. 615; *Tuck*, 127/731, 56 S. E. 1001.

Merger of estates in one person, burden of proof of facts negating. *Muscogee*

Mfg. Co., 126/211, 54 S. E. 1028, 7 L. R. A. (N. S.) 1139.

Minor, burden on one selling liquor to, to show written authority from parent or guardian. **Graham**, 121/590, 49 S. E. 678. Burden of proving that minor did not acknowledge or waive service, in attacking judgment against him. **Wheeler**, 145/164, 88 S. E. 951.

Mortgage, burden of proof on defendant to foreclosure of, where plaintiff introduced note and mortgage. **Collins**, 121/513, 49 S. E. 594.

Motion to set aside verdict and judgment, burden of proving grounds of. **Frey**, 145/110, 88 S. E. 567.

Municipal ordinance, burden of proving unreasonableness of, by extrinsic facts. **Atlantic Postal Tel. Co.**, 136/567, 71 S. E. 1115.

Burden of proof of absence or invalidity of, when on accused. **Fountain**, 2 A. 716, 58 S. E. 1129.

Negligence, burden of proof as to. **Whitton**, 106/797, 32 S. E. 857; **Portner B. Co.**, 116/171, 42 S. E. 408; **A. & B. R. Co.**, 117/50, 43 S. E. 456; **Chenall**, 117/106, 43 S. E. 443; **City of Atlanta**, 117/144, 43 S. E. 443. Master and servant. **Vinson**, 2 A. 53, 58 S. E. 413.

Burden of proof to rebut presumption of. **Augusta Ry. Co.**, 3 A. 513, 60 S. E. 213.

Of plaintiff, burden of proving, by preponderance of evidence, where prima facie case made. **Stewart**, 135/637, 70 S. E. 325. See **L. & N. R. Co.**, 135/67, 68 S. E. 805.

Burden of proof of, in suit by injured servant to recover damages of master. **Ingram**, 108/197, 33 S. E. 961. In suit by employee. **McDaniel**, 113/80, 38 S. E. 404; **W. & A. R. Co.**, 113/355, 38 S. E. 820. Where railroad company is sued for killing employee. **Aug. So. R. Co.**, 105/135, 31 S. E. 420.

Burden of proof of freedom from, rule as to. **W. & A. R. Co.**, 139/545, 77 S. E. 802; **W. & A. R. Co.**, 139/494, 77 S. E. 576; **Ga. R. Co.**, 127/408, 56 S. E. 409.

Of master, burden as to, in action against him by servant for injuries from defective machinery or incompetency of fellow-servant. **Gunn**, 111/427, 36 S. E. 804.

Of carrier; burden of proof on plaintiff who attempted to place horse on car. **So. Ry. Co.**, 3 A. 553, 60 S. E. 287.

Burden of disproving, on part of one in control of thing causing injury, in unusual manner; maxim *res ipsa loquitur* discussed. **Sinkovitz**, 5 A. 788, 64 S. E. 93. See **Cochrell**, 5 A. 322, 63 S. E. 244.

Negotiable paper, burden of proof on maker of, to prove that holder purchased it after maturity. **Johnson County Bank**, 9 A. 467, 71 S. E. 757.

Non-resident, burden of proof of situs of debt to. **Padrosa**, 122/264, 50 S. E. 97.

Notary's appointment, burden of proof as to. **Perry**, 16 A. 545, 85 S. E. 821.

Note sued on, burden of proof, where defendant admits execution of, and plaintiff's ownership. **Martin**, 136/228, 71 S. E. 133.

Notice, burden of proof of. **Eng-Am. Co.**, 112/823, 38 S. E. 103; **Burch**, 125/157, 53 S. E. 1008.

That land was bought with proceeds of exempted property, burden of proof of. **Dawson Grocery Co.**, 137/846, 74 S. E. 796.

Of dissolution of partnership, burden of proof of. **Mims**, 3 A. 248, 59 S. E. 711.

Actual or imputable, of equitable title, burden of proof of. **Marshall**, 136/543, 71 S. E. 893.

Oath, burden of proof as to administration of. **Cox**, 13 A. 688, 79 S. E. 909.

Objecting party, burden on, to state specific reason for not admitting. **Andrews**, 118/1, 43 S. E. 852.

Officer, burden of proof as to alteration of return of. **Vickers**, 111/119, 36 S. E. 463. Appointment of, burden of proof as to. **Perry**, 16 A. 545, 85 S. E. 821. Burden of showing title to office, on respondent in quo warranto.

- Ledbetter**, 147/710, 95 S. E. 209. Burden of proving failure to comply with official duty. **Beckham**, 147/324, 93 S. E. 884.
- Opening and conclusion of argument** given to party carrying burden of proof. **Atlanta Land Co.**, 122/374, 50 S. E. 124; **Central R. Co.**, 110/172, 35 S. E. 345; **Horton**, 110/355, 35 S. E. 663; **Whitaker**, 110/857, 36 S. E. 231.
- Assumption of burden to obtain. **Crankshaw**, 1 A. 363, 58 S. E. 222. Not lost by defendant who assumed burden, although plaintiff offered no evidence. **Dickey**, 127/646, 56 S. E. 756; **Cable Co.**, 118/913, 45 S. E. 787. Lost by plaintiff who invoked ruling as to burden. **Oslin**, 108/803, 34 S. E. 168.
- Partnership**, burden of proof as to existence of. **Atlanta Trust Co.**, 20 A. 152, 92 S. E. 759; **Cowart**, 137/586, 73 S. E. 822, Ann. Cas. 1913A, 932; **American Cotton College**, 138/148, 74 S. E. 1084.
- Payment**, burden of proving. **Belcher**, 135/73, 68 S. E. 839; **Bank of the University**, 101/104, 28 S. E. 168.
- Plaintiff testifying in his own behalf, burden of proof not carried by, if material conflicts and contradictions appear in his testimony. **Horne**, 122/45, 49 S. E. 722.
- Plea of avoidance**, burden of proof as to. **Thomas**, 125/77, 54 S. E. 77, 6 L. R. A. (N. S.) 658. Burden of proof on plaintiff, where no affirmative defense and no plea in confession and avoidance, to support his case by a preponderance of evidence. **Courson**, 132/698, 64 S. E. 997; **Hawkins**, 136/550, 71 S. E. 873. Burden of proof on plaintiff, where defendant merely denies; on defendant, as to affirmative defenses set up. **Harrell**, 141/322, 325, 80 S. E. 1010.
- Possession**, burden of proof as to, in claim case; onus not cast on claimant by evidence here. **Howell**, 121/461, 49 S. E. 299.
- Burden where entry of levy states

that defendant is in. **Burt**, 113/1145, 39 S. E. 409.

Burden on plaintiff in *fi. fa.*, entry of levy not showing possession in defendant in *fi. fa.* **Davis**, 108/120, 33 S. E. 852.

Of land sued for, burden of proof not upon plaintiff where defendant admits possession. **McElroy**, 142/37, 82 S. E. 442.

Of stolen property, burden of proof as to. **Wiley**, 3 A. 120, 59 S. E. 438.

Preponderance of evidence carries burden in civil case. **Youmans**, 11 A. 66, 74 S. E. 710; **Supreme Conclave**, 120/329, 47 S. E. 940. Burden does not involve establishment to reasonable and moral certainty. **Central Ry. Co.**, 139/49, 76 S. E. 570; **Polk**, 148/34, 95 S. E. 988; **Whitley**, 147/323, 93 S. E. 887. But gift of land in parol must be proved beyond a reasonable doubt. **Adkins**, 147/136, 93 S. E. 92; **Williams**, 147/219, 93 S. E. 215.

Prescription, burden of proof of title by. **David**, 140/240, 78 S. E. 909; **Brown**, 147/498, 94 S. E. 759.

Processioning, burden of proof on applicant for, on trial of protest to return. **Georgia Talc Co.**, 140/245, 78 S. E. 905. Burden of proof of actual adverse possession under claim of right, in processioning. **Norman**, 131/72, 61 S. E. 1039.

Provocation for using obscene language in presence of female, burden on defendant to show. **Holcombe**, 5 A. 53, 62 S. E. 647.

Purchase, or acquirement of lien, innocently and without notice, burden of proving. **Ray**, 147/265, 93 S. E. 418.

Railroad, burden of proving diligence, in suit by injured servant of. **L. & N. R. Co.**, 135/522, 69 S. E. 870.

Burden of proof of diligence on railroad company, after proof of injury by train. **Central Ry. Co.**, 120/475, 478, 47 S. E. 956; **Snowball**, 130/86, 60 S. E. 189.

Burden of proof that danger was apparent to one killed by train. **Williams**, 126/711, 55 S. E. 948.

- Burden of proof of injury by railroad engine, and of exercise of ordinary diligence.** *Ga. &c. Ry. Co.*, 133/135, 65 S. E. 381.
- Burden of proof in suit for expulsion of railway passenger.** *Central Ry. Co.*, 106/828, 32 S. E. 874. Not shifted. *Southern Ry. Co.*, 141/69, 80 S. E. 325.
- Burden of proof in suit by injured railway employee.** *Raleigh R. Co.*, 106/572, 32 S. E. 622; *Whitton*, 106/798, 32 S. E. 857; *Walton*, 12 A. 107, 76 S. E. 1060; *Central Ry. Co.*, 10 A. 484, 73 S. E. 702. Methods of carrying burden, under act of 1909. *Wrightsville & T. R. Co.*, 9 A. 154, 70 S. E. 955. Rule as to burden of proof, in Civil Code, § 2780, not applicable in action by railroad employee against company. *Port Royal R. Co.*, 103/579, 30 S. E. 262.
- Reasonable doubt, burden of proof on State to prove guilt beyond.** *Mills*, 133/155, 65 S. E. 368.
- Recoupment, burden of proof to establish plea of, by preponderance of evidence.** *Gem Knitting Mills*, 3 A. 709, 60 S. E. 365; *Block*, 144/145, 86 S. E. 316.
- Release, pleaded by defendant against note, burden of proof of, not shifted on plaintiff who contends it to be a forgery.** *Martin*, 130/79, 60 S. E. 253.
- Remainder estate, burden of proof of divesting of.** *Almand*, 141/372, 81 S. E. 228.
- Rescind sale and reclaim goods which vendee has mortgaged to another, burden of proof in suit to.** *Mashburn*, 117/568, 44 S. E. 97.
- Revocation of power of attorney, burden of proof of, generally on party asserting it.** *Foddrill*, 131/790, 63 S. E. 350.
- Search, burden of showing that evidence obtained by, was procured after legal arrest.** *Sherman*, 2 A. 148, 58 S. E. 393.
- Service of process, burden of proof on party denying.** *McLeod*, 14 A. 77, 80 S. E. 207; *Johnson*, 14 A. 380, 80 S. E. 909.
- Settle claim for less than full amount, burden of proof authority to.** *Kaiser*, 106/217, 32 S. E. 123.
- Shipper, burden of proof on, to show that recital in contract signed by him is not true.** *Ga. So. Ry. Co.*, 2 A. 516, 58 S. E. 782. That injury occurred in county where suit brought. *Brooke*, 3 A. 494, 60 S. E. 218.
- Slander suit, burden of proof of malice in.** *Taylor*, 2 A. 180, 58 S. E. 369. Of falsity of words spoken. *Hendrix*, 3 A. 482, 60 S. E. 206.
- Sleeping-car company, burden of proof in action against, for loss of passenger's effects.** *Pullman Co.*, 126/609, 55 S. E., 933, 9 L. R. A. (N. S.) 407.
- Specific performance, burden of proof of identity of land, in action for.** *Higginbotham*, 116/742, 42 S. E. 1000.
- Stock subscription, burden of one sued on, to show payment.** *Justice*, 13 A. 389, 79 S. E. 223. Burden of proof of amount of damages, on purchaser of stock shares, suing for breach of implied warranty in sale. *Brooks*, 130/213, 60 S. E. 456.
- Sunday, burden on State to show that act charged to have been done on, was not work of necessity or charity, though accused denied doing the act.** *Arnheiter*, 115/573, 41 S. E. 989, 58 L. R. A. 392.
- Burden of proof on carrier, to show that running of freight-train on, was not unlawful.** *Brand*, 3 A. 628, 60 S. E. 339.
- Surety in replevy bond, burden of proof on, to show cause for non-delivery of identical property.** *Kaminsky*, 2 A. 332, 58 S. E. 497.
- Burden lies upon sureties sued on judgment against principal.** *Brown*, 107/85, 32 S. E. 905. As to suretyship of one apparently principal. *Bishop*, 13 A. 39, 78 S. E. 947. As between signers of note. *Pirkle*, 109/32, 34 S. E. 276. Surety's knowledge of usury. *Lott*, 23 A. 458, 98 S. E. 361.
- Surgeon's want of care, skill, or diligence, burden of proof of, and that injury resulted from such want.** *Ga. Nor. R. Co.*, 114/639, 40 S. E. 708; *Akridge*, 114/949, 41 S. E. 78.

Tax, burden of proving unreasonableness of. *Ray*, 142/799, 83 S. E. 938. Burden of proof of taxing power. *Southern Express Co.*, 124/588, 53 S. E. 185, 5 L. R. A. (N. S.) 619.

Timber, burden of proof of termination of right to cut. *Brinson*, 122/486, 50 S. E. 369. Burden of proof of termination of timber estate, on special facts as to reasonable time, etc. *Shippen Lumber Co.*, 136/37, 70 S. E. 672.

Time; burden of proof on State, that accusation or indictment was after commission of offense; and as to bar of limitation. *Askew*, 3 A. 79, 59 S. E. 311.

Title admitted to have been in plaintiff's predecessor, burden of proof on defendant asserting divestiture of. *Hall*, 146/815, 92 S. E. 536.

Burden on claimant to prove, on proof of possession in defendant since judgment. *Rountree*, 123/449, 51 S. E. 346.

Burden of proof of, not shifted from plaintiff by defendant's failure to deny claim defined and limited by attached abstract. *Dugas*, 130/90, 60 S. E. 268.

Burden of proof of better title; and how shifted. *Garbutt Lumber Co.*, 126/173, 54 S. E. 944; *Moss*, 126/196, 54 S. E. 968.

Trover, burden in, and in trespass; burden as to set-off in trover. *Milltown, Lumber Co.*, 5 A. 352, 63 S. E. 270.

Usury, burden of proving. *Finney*, 111/108, 36 S. E. 461; *Pusser*, 132/280, 64 S. E. 75, 22 L. R. A. (N. S.) 571; *Virginia-Carolina Chemical Co.*, 126/53, 54, 54 S. E. 929; *Rogers*, 124/501, 52 S. E. 617, 31 L. R. A. (N. S.) 213. Not carried. *Bellerby*, 112/306, 37 S. E. 376; *Wilkins*, 113/32, 38 S. E. 374, 84 Am. St. R. 204.

Voluntary conveyance, burden of proof as to facts showing validity of. *Cohen*, 105/347, 31 S. E. 205.

Warranty of title to land, in suit for breach of, burden as to outstanding title. *McMullen*, 117/845, 45 S. E. 258; *Turner*, 141/123, 80 S. E. 901. Bur-

den of proof in action for breach of warranty of title, how carried. *Joyner*, 132/779, 782, 65 S. E. 68.

Wife, burden on, to show fraud or undue influence, inducing gift to husband. *Third National Bank*, 5 A. 114, 62 S. E. 826. Burden of proof of bona fides and validity of gift, on wife, in contest with subsequent purchaser from husband. *Smith*, 2 A. 144, 58 S. E. 303.

Wild animal, burden of proof, as to wildness. *Crosby*, 121/198, 48 S. E. 913.

Will lost, burden of proof in proceeding to establish. *Scott*, 113/795, 39 S. E. 500, 84 Am. St. R. 263.

Burden of proof on propounder of, for probate; and as to copy of lost will. *Harris*, 138/752, 76 S. E. 40.

Burden of proof to sustain attack on paper offered for probate as. *McIntyre*, 120/70, 47 S. E. 501, 102 Am. St. R. 71, 1 Ann. Cas. 606.

Burden of proof on propounder, as to due execution and testamentary capacity. *Wells*, 140/119, 78 S. E. 823, 47 L. R. A. (N. S.) 722, Ann. Cas. 1914C, 898.

Shifting of burden, after propounder of, has made out prima facie case. *Penn.*, 144/67, 86 S. E. 233.

Burden on propounder of, on issue of devisavit vel non, when shifted. *Credille*, 123/673, 51 S. E. 628, 107 Am. St. R. 157; *Oxford*, 136/589, 71 S. E. 883; *Slaughter*, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Burden of proof on propounder of, for probate in solemn form; what facts essential. *Bowen*, 136/861, 72 S. E. 340; *Bullock*, 144/731, 87 S. E. 1058; *Shewmake*, 144/816, 821, 87 S. E. 1045.

In proceeding calling for probate in solemn form and offering caveat. *Peale*, 131/826, 62 S. E. 581.

Burden of proof on propounder of, as to signing, and when not so shifted to caveator as to require him to prove his contention to satisfaction of jury. *Mobley*, 134/125, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1004.

Burden of proof on issue of devisavit vel non, upon propounder of. On is-

sue of undue influence, on caveator. *Edenfield*, 143/95, 84 S. E. 436.

Burden of proof carried by preponderance of evidence, on issue by caveat to probate of nuncupative will. *Harp*, 142/5, 82 S. E. 246.

Year's support, burden of proof, on widow applying for, that she was the lawful wife, and that her prior marriage was legally dissolved. *Wilson*, 108/275, 33 S. E. 975.

Burden of proof on caveator of application for. *Jones*, 137/681, 684, 74 S. E. 51.

When burden on objectors to return of appraisers setting apart. *Gray*, 19 A. 510, 91 S. E. 901; *Young*, 19 A. 551, 91 S. E. 900; *Smith*, 115/692, 42 S. E. 72. As to setting apart to non-resident widow. *Jones*, 142/127, 82 S. E. 445.

Burden of proof on creditors objecting to appraisers' return of. *Lee*, 107/153, 33 S. E. 39.

4. DEMONSTRATIVE AND PHYSICAL EVIDENCE.

Articles not formally tendered, allowed to go to jury, as cause for new trial. *Barrow*, 15 A. 690, 84 S. E. 204; *Smith*, 14 A. 610, 81 S. E. 817; *Barrow*, 15 A. 690, 84 S. E. 204.

Similar to those used at time of injury, admissible to illustrate method of use. *Mayor &c. of Madison*, 130/153, 155, 60 S. E. 461.

Autopic preference. *Morse*, 10 A. 61, 72 S. E. 534.

Body of accused, no error in rejecting formal tender of, to show height and size, he being in court. *Lindsay*, 138/819, 76 S. E. 369.

Bottle not full, and explanation as to quantity taken from it, admissibility of, in issue as to intoxication. *Atlantic Ry. Co.*, 125/457, 54 S. E. 622.

Clothing worn by deceased, admissibility of, on trial for homicide. *Goodwin*, 148/33, 95 S. E. 674. Sent out with jury, no ground for new trial, when. *Weldon*, 21 A. 332, 94 S. E. 326.

Concealed article found by illegal search, admissible; former decisions overruled. *Smith*, 17 A. 693, 88 S. E. 42; *Calhoun*, 17 A. 705, 88 S. E. 586; *Hornbuckle*, 18 A. 17, 88 S. E. 748. Concealed weapon taken from one under illegal arrest, inadmissible against him. *Evans*, 106/519, 32 S. E. 659.

Exhibition of person to jury on trial of suit for damages, from injury to him, not erroneous to allow. *Southern Ry. Co.*, 132/858, 64 S. E. 1083.

Identification by requiring the accused to exhibit himself in a certain situation, not proper. *Aiken*, 16 A. 848, 86 S. E. 1076.

Inspection and tasting by jurors. *Morse*, 10 A. 61, 64, 72 S. E. 534.

By jury, of scene of crime; refusal to allow, not reviewable. *Smith*, 11 A. 90, 74 S. E. 711.

Of articles in jury-room, when no error in allowing. *Union*, 7 A. 27, 31, 66 S. E. 24.

Instrument of homicide, rock admitted as, on what showing. *Dill*, 106/683, 32 S. E. 660.

Jury's view of place of injury; allowance in discretion of judge, if not consented to. *Central Ry. Co.*, 134/588, 68 S. E. 321.

Medicine; admissibility of bottle, with number and contents of prescription, and testimony of physicians as to effect of doses prescribed. *Sullivan*, 121/186, 48 S. E. 949.

Weapon, no error in admitting in evidence here. *Boynton*, 115/588, 41 S. E. 995. Broken curtain pole found behind a trunk near deceased, admissible on trial for murder here. *Roberts*, 123/146, 51 S. E. 374. Weapons and garment shown, but not formally offered, went to jury in view of counsel; new trial denied. *Burke*, 148/230, 96 S. E. 326.

5. DOCUMENTS; AND EVIDENCE AT FORMER TRIAL.

Accessibility of person, when does not exclude proof of his signature, by witness

knowing his handwriting. **McCray**, 134/416, 68 S. E. 62, 20 Ann. Cas. 101.

Accomplice deceased, proof of his testimony on former trial. **Hardin**, 107/718, 38 S. E. 700.

Account, ex parte affidavit not admitted to prove, except in justice's court. **Bass**, 113/262, 38 S. E. 834.

Current; book kept by agent was not admissible on effort to surcharge. **Smith**, 101/137, 28 S. E. 653.

Note as evidence as to amount of. **Sorrells**, 22 A. 297, 298, 95 S. E. 998.

When admissible as part of answer to interrogatory. **Arnold**, 4 A. 56, 60 S. E. 815.

Account books, admissibility of. **May**, 11 A. 455, 75 S. E. 672; **Bush**, 3 A. 43, 59 S. E. 459; **Spence**, 20 A. 62, 63, 92 S. E. 555; **Hinkle**, 127/437, 56 S. E. 464; **Linder**, 1 A. 61, 57 S. E. 975; **Tifton Ry. Co.**, 4 A. 191, 60 S. E. 1087. Admissibility and effect of. **Sherman**, 139/781, 78 S. E. 123.

When not admissible. **Bass**, 113/262, 38 S. E. 834.

Exclusion of, harmless here. **Schroeter**, 16 A. 522, 85 S. E. 787.

Kept by agent who was a partner in the firm sued by his principal, not admissible. **Smith**, 101/137, 28 S. E. 653.

Mutilated, not admitted. **Harrold**, 107/849, 33 S. E. 640.

Whether admissible to prove cash payment on note. **Harrold**, 107/851, 33 S. E. 640.

Part of res gestæ as to when firm began business. **Cody**, 103/789, 30 S. E. 281.

Not admitted to prove account between defendant and one not a party. **Augusta Naval Stores Co.**, 133/139, 65 S. E. 370.

Proof of account without production of. **Smith**, 16 A. 449, 85 S. E. 612.

Admissibility of, and of accountant's testimony as to what they show. **Cabaniss**, 8 A. 130, 68 S. E. 849. Absence of, as affecting admissibility of bookkeeper's testimony. **Swift**, 8 A.

544, 70 S. E. 97. Absence of, as affecting admissibility of testimony as to matters of account. **Smith**, 16 A. 449, 85 S. E. 612; **Keaton**, 16 A. 473, 85 S. E. 682.

Evidence insufficient to show that they were accounts of a corporation. **Bludwine Bottling Co.**, 14 A. 285, 80 S. E. 853.

Left, before trial, in jury room, when no ground for new trial. **Edmundson**, 122/841, 50 S. E. 942.

Not admissible without foundation laid. **Talbotton R. Co.**, 106/229, 32 S. E. 151.

Of others than those specified, not admissible to prove account sued on. **Blanchard**, 142/447, 83 S. E. 104.

Refreshing recollection of witness by. **Burns**, 14 A. 244, 80 S. E. 676.

Secondary evidence of contents not admissible, when books accessible. **Henderson**, 15 A. 70, 82 S. E. 588.

Testimony of contents, when not received. **Dickson**, 137/299, 73 S. E. 515.

No harmful error in admitting, where evidence showed agreement to pay account. **Oglesby**, 18 A. 401, 89 S. E. 436.

Not kept by the witness, correctness of account not shown by testimony based solely on. **So. Home B. & L. Assn.**, 111/826, 35 S. E. 679.

Copy of account from, when admissible. **Hawkinsville &c. R. Co.**, 20 A. 432, 93 S. E. 109.

Of decedent, admissible in contest of creditors on distribution of estate. **Third National Bank**, 135/324, 69 S. E. 482.

Act of General Assembly, recitals of, conclusively determined result of election as to county-site. **Vornberg**, 143/111, 84 S. E. 370.

Administration, admissibility of certified copies of record showing various steps in. **Bowen**, 144/1, 85 S. E. 1007.

Usual method of proving, by introducing letters. **Guest**, 145/592, 89 S. E. 687.

Administrator as attorney in fact; paper executed by heirs held inadmissible. *Miller*, 145/617, 89 S. E. 689.

Deed of, without order for sale, admissible as color of title. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173. With order for sale, but without letters of administration, a muniment of title. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173. To wild land, not objectionable as evidence on ground presented. *Heard*, 136/731, 71 S. E. 1118. Objections to admissibility of, considered. *Sapp*, 131/433, 62 S. E. 529. Admissible over objection of adverse possession. *Smith*, 133/790, 66 S. E. 1086. See *Weeks*, 133/479, 66 S. E. 168, 134 Am. St. R. 213. As evidence of title must be aided by proof of legal order to sell. Recital not sufficient. Copy of order need not be attached; how proved. *Brown*, 141/419, 81 S. E. 196. Under order of court of ordinary for sale of realty, admissible over objections here taken. *Oliver*, 114/593, 40 S. E. 826.

Exemplification of letters of, from another State; admissibility of. *Stewart*, 18 A. 519, 89 S. E. 1052.

Letters, when admissible without pleadings, etc., on which based. *Taylor*, 121/223, 48 S. E. 943.

Unsigned order for sale by, when admissible, though it describe lands inaccurately. *Tarver*, 138/607, 75 S. E. 603.

Order for sale, when admissible over objection for want of description of land. *Harden*, 143/727, 85 S. E. 874.

Returns of, duly examined and admitted to record, admissible where relevant. *Copeland*, 147/602, 95 S. E. 13.

Advertisement of sale, admissibility of. *Taylor*, 21 A. 274, 275, 94 S. E. 254.

Certified copy not required; original newspaper admissible. *Taylor*, 21 A. 274, 275, 94 S. E. 254.

Affidavit, what constitutes. Effect of omission of jurat. *Beach*, 106/74, 31 S. E. 806.

Attached to another paper, not treated as connected with it, in the absence of proper reference. *Hicks*, 129/309, 59 S. E. 837.

Attached to interrogatories, questions referring to, properly excluded. *Daugharty*, 134/651, 68 S. E. 472.

By attesting notary's father, admissible. *Kirkland*, 145/94, 88 S. E. 680.

In forma pauperis, when admissible as affecting credibility of one shown to be property owner. *Leake*, 5 A. 102, 62 S. E. 729.

Insufficient evidence as to making of. *Johnson*, 13 A. 589, 79 S. E. 524.

Introduced in criminal case, by agreement, instead of oral testimony; error in charging jury that they might believe as much or as little of it as they pleased. *Parker*, 11 A. 252, 75 S. E. 437.

Lost, setting aside of judgment establishing copy of, in lieu of original. *Chapman*, 131/805, 63 S. E. 337.

Not entitled in the cause, not admissible. *Hicks*, 129/309, 59 S. E. 837; *Hill*, 112/788, 38 S. E. 42, 52 L. R. A. 398; *Reese*, 112/910, 38 S. E. 345.

Not "intituled in the cause," when to be rejected on hearing for injunction. *Whitley*, 105/251, 31 S. E. 171.

Not entitled, and not referring to cause or court, not admissible. *Horton*, 130/467, 60 S. E. 1059; *Falls City Co.*, 130/559, 61 S. E. 230; *Johnson*, 126/720, 56 S. E. 80.

Not lawful unless oath administered or taken, though written, signed, and delivered. *Britt*, 130/74, 60 S. E. 180.

Not objectionable on hearing of mandamus by consent in vacation. *City of Camila*, 134/351, 352, 67 S. E. 940.

Of attorney, to petition for injunction, that of his own knowledge the recitals of fact therein are true. sufficient. *Boston Mercantile Co.*, 123/458, 51 S. E. 466.

Of deceased witness, used on hearing of other case, when not admissible. *Dennard*, 142/171, 82 S. E. 558.

Of forgery of deed makes special issue for trial, but deed subject to attack

Affidavit—(Continued).

after its introduction. **Webb**, 134/388, 67 S. E. 1084.

Of relationship of juror set aside for cause may be considered. **Jordan**, 120/864, 48 S. E. 352.

Of witness, since deceased, for use on hearing for injunction, not admissible on final trial. **Fender**, 131/440, 62 S. E. 527.

Must be made and signed in affiant's name, not in that of his client. **Clark**, 142/200, 82 S. E. 563.

Ex parte, not admissible on trials. **Smith**, 147/689, 95 S. E. 281; **Faircloth**, 147/787, 789, 95 S. E. 689.

To prove account, when not admitted. **Bass**, 113/262, 38 S. E. 834.

Used as evidence on former trial, admissibility of, and of contradictory statements of the affiant. **Parker**, 17 A. 252, 85 S. E. 705.

When sufficiently entitled in the cause, though names of parties transposed. **Selman**, 4 A. 375, 61 S. E. 501.

On hearing for new trial, admissibility of. **Harper**, 131/782, 783, 64 S. E. 339.

Not served in accordance with previous order relating to exchange of affidavits, may be rejected. **Durden**, 146/371, 91 S. E. 114.

Order to submit, to other party before interlocutory hearing, not applied to documents. **Town of Adel**, 122/535, 50 S. E. 481.

Practice as to admission of, in various proceedings, discussed. **Robertson**, 132/312, 64 S. E. 73.

Not filed in injunction case three days before hearing, as required by judge's order, admitted in evidence; discretion of court not abused. **Boston Mercantile Co.**, 123/464, 51 S. E. 466.

Admissible to prove violation of injunction, on hearing of rule for contempt. **Warner**, 124/387, 52 S. E. 446, 4 Ann. Cas. 180.

Admissible on habeas-corpus hearing, in discretion of court; but better practice is to hear testimony viva voce, or by depositions, with right of cross-examination. **Robertson**, 132/310, 64 S. E. 73.

Affidavit—(Continued).

For use at hearing before judge; requirement as to formality of execution. **Porter**, 146/594, 91 S. E. 775; 93 S. E. 405.

How to be carried up, for review. **Harrison**, 133/31, 65 S. E. 26; **Roberts**, 133/642, 66 S. E. 938; **Harrison**, 132/674, 64 S. E. 688.

Used in evidence, can not become part of record save as part of approved brief of evidence. **Dolvin**, 134/113, 67 S. E. 541. Affidavits and documents not properly entitled and executed, and excluded at interlocutory hearing, could be completed and used on motion to vacate injunction. **Smith**, 142/774, 83 S. E. 789. Specified as material, not in bill of exceptions nor part of approved brief of evidence, not considered on review. **Jones**, 131/52, 61 S. E. 977. Of persons not witnesses at the trial (not newly discovered), may, but need not, be considered by trial judge on motion for new trial. **Central Ry. Co.**, 120/476, 47 S. E. 956. Refused by witnesses, their attendance at court compellable. **Milner**, 143/820, 85 S. E. 1045, L. R. A. 1916B, 977.

Agent, receipt of person signing as, not admitted without proof of agency. **Mathis**, 18 A. 385, 89 S. E. 435.

Individual undertaking of, when instrument (note and mortgage) not excluded as. **Foddrill**, 131/790, 63 S. E. 350.

Agreement to use records instead of certified copies did not include paper not admissible to record. **Turner**, 141/27, 80 S. E. 461.

Ancient document, transfer on deed purporting to convey back to vendor, when not admissible as. **Williamson**, 110/53, 35 S. E. 301. Deed here admissible. **Follendore**, 110/359, 35 S. E. 676. When deed is admissible as, without proof of execution. **Leverett**, 6 A. 91, 64 S. E. 317; **McConnell**, 134/95, 67 S. E. 440; **Daugharty**, 134/651, 68 S. E. 472; **McArthur**, 107/796, 34 S. E. 205. Ancient deed may be shown a forgery. **Albright**, 106/302, 31 S. E. 761. Not connected with title of party offering.

not received to illustrate good faith of his possession, though handed to him by his predecessors. *Callaway*, 140/207, 78 S. E. 846. Antiquity of deed not shown by its date alone. Necessity of proof, where attestation unofficial. *Rowe*, 143/756, 85 S. E. 917.

Ancient map of public roads of county, when admissible in contest of coterminous landowners. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173.

Annuity tables, when admissible without proof of correctness. *W. & A. R. Co.*, 115/715, 42 S. E. 74; *Atlanta Ry. Co.*, 118/449, 45 S. E. 494.

Admissible when evidence tends to prove permanent injuries. *Collins Park Co.*, 112/663, 37 S. E. 975.

Anonymous letter, admissibility of. *Covington*, 15 A. 513, 83 S. E. 867.

Attachment, affidavit void as basis of; but considered as testimony supporting petition for. *Price*, 118/261, 45 S. E. 225.

Need not be introduced as, on trial of attachment case. *Haag*, 9 A. 655, 72 S. E. 46.

Attestation and acknowledgment of papers out of the State. *Kirkland*, 145/94, 88 S. E. 680; *Real Estate Bank*, 145/831, 90 S. E. 49; *McTyer*, 142/850, 83 S. E. 955.

Of conveyance by corporation, for admission to record, prima facie authorized. *Frazier*, 147/654, 95 S. E. 211; *Missouri Ins. Co.*, 147/677, 95 S. E. 244; *Boone*, 147/812, 95 S. E. 707.

Of deed; competency of attorney as witness. *Morgan*, 141/329, 80 S. E. 996.

By one witness, error in admitting deed, harmless, in view of undisputed evidence as to 30 years possession of land. *Foreman*, 8 A. 823, 70 S. E. 158. Deed not duly attested; secondary evidence admitted without objection is basis of legal verdict. *Munroe*, 145/215, 88 S. E. 947.

Of foreign deed, by judge, what must be shown to render admissible. *Wood*, 103/236, 29 S. E. 820.

Of record from another State; judge's certificate that clerk's attestation is in due form, necessary. *Conrad*, 123/242, 51 S. E. 299.

Of will; issue as to whether testator could and did see witnesses sign. *Gordon*, 141/348, 80 S. E. 1007.

Waiver of, by failure to object. *Balchin*, 10 A. 435, 73 S. E. 613. And see *Deed*.

Attesting officer in other State, authentication of official character of, when required. *Whatley*, 104/765, 30 S. E. 1003.

Authentication of records judicial, and those not pertaining to courts, what necessary for, under act of Congress. *Taylor*, 118/874, 45 S. E. 672.

Bank-book; savings bank depositor's pass-book, admissible against bank, and prima facie evidence that bank owes balance shown therein, when. *Atlanta Banking Co.*, 115/939, 42 S. E. 265. Not conclusive as to amount due depositor. *Bank of Lawrenceville*, 129/583, 59 S. E. 291; *Moore*, 21 A. 183, 94 S. E. 90.

Bankruptcy, admissibility of referee's certificate. *Harrell*, 121/608, 49 S. E. 703.

Certificate of discharge in, admissible for claimant to attack judgment. *Nation*, 3 A. 83, 59 S. E. 330.

Exemplification admissible on issue as to delivery of deed before adjudication. *Deubler*, 139/774, 78 S. E. 176.

Petition, and order of adjudication, admissibility of certified copies of. *Hutchinson Shoe Co.*, 143/170, 84 S. E. 453.

Proceedings should be shown by certified copy, not original record. *Whitaker*, 11 A. 209, 220, 75 S. E. 258; *Traylor*, 11 A. 497, 75 S. E. 828. Trusteeship not shown by parol. *Id.*

Bankrupt's discharge, not relevant in trustee's suit to recover his property fraudulently transferred. *Hunt*, 128/421, 57 S. E. 489.

Books of bankrupt business, when admissible. *Lowry Bank*, 122/489, 50 S. E. 396.

Bill-heads, admissibility of, on issue of partnership. *Mims*, 3 A. 247, 59 S. E. 711.

Bill of lading, admissibility of duplicate. *Rogers-McRorie Co.*, 13 A. 495, 79 S. E. 374.

Held by final carrier, admissible on behalf of plaintiff without proof of execution. *L. & N. R. Co.*, 135/731, 70 S. E. 576.

Blackhand letter to person other than accused, when no error in excluding, on motion to change venue. *Wilburn*, 140/138, 78 S. E. 819.

Bona fides, admissibility of void order of court to show, when acts performed were alleged to be fraudulent. *Kidd*, 105/209, 31 S. E. 430.

Bond for title, admissibility of, as color in connection with proof of possession. *Southern Ry. Co.*, 108/122, 33 S. E. 850; *Tumlin*, 108/520, 34 S. E. 171.

With deed, admissibility of. *Castleberry*, 135/528, 69 S. E. 817.

Referred to in description, no error in excluding deed by maker of the bond. *McMillan*, 147/118, 93 S. E. 81.

Books are admissible to show that they do not contain a given entry. *Griffin*, 115/610, 41 S. E. 1003.

Assignment of error on exclusion of, insufficient, in not disclosing enough of their contents. *Spence*, 128/722, 58 S. E. 356.

Contents of, or non-existence of certain matter in, how proved. *Griffin*, 115/610, 612, 41 S. E. 1003.

Not offered to prove account thereon, preliminary proof of their correctness not required. *Becker*, 138/634, 75 S. E. 1122.

Of bank, absence of entry on, as evidence that deposit was not made. *Martin*, 137/286, 73 S. E. 387.

Of carrier, disclosure of information from, as affected by interstate-commerce law. *Ezell*, 13 A. 98, 78 S. E. 850.

Of corporation; proof of authenticity. *Bridges*, 15 A. 291, 82 S. E. 925; *Fraternal Relief Asso.*, 9 A. 44, 53, 70 S. E. 265.

Of corporation, when admissible. *Lowry Bank*, 122/489, 50 S. E. 396.

Of old penitentiary, admissibility of certified transcript from. *Folks*, 135/179, 69 S. E. 24.

Of original entries, what admissible as; ledger admissible, when. *Harper*, 13 A. 238, 79 S. E. 44.

Of partnership, partner presumed to know of transaction entered on. *Sparks*, 104/323, 30 S. E. 823.

Of science and art, not admissible to prove opinions of experts stated in them, and can not, over objection, be read in argument to jury. *Quattlbaum*, 119/433, 46 S. E. 677; *Boswell*, 114/43, 39 S. E. 897. Book purporting to contain opinion of experts, exclusion of extracts from, not error. *Cook*, 103/386, 30 S. E. 27. What admissible. *Quattlbaum*, 119/435, 46 S. E. 677.

Of tax-collector, contents not shown by his affidavit. *Finney*, 113/364, 38 S. E. 818.

When no error in requiring production of, by defendant municipal corporation. *Town of Adel*, 122/535, 50 S. E. 481.

When proper to admit book not of original entries. *Harper*, 13 A. 238, 79 S. E. 44. Admissibility of entry in. *Becker*, 133/864, 67 S. E. 92. Witness not allowed to state what they show, but may testify from memory as refreshed by them. *Johnson*, 125/243, 246, 54 S. E. 184.

When certified copy of book or paper is primary evidence of contents. *Daniel*, 114/533, 40 S. E. 805.

Admissibility of entries in. *Shields*, 22 A. 507, 509, 96 S. E. 330; *Moore*, 21 183, 94 S. E. 90.

Admissibility of entries, without preliminary proof of correctness, where opposing party had examined them and made no denial. *Becker*, 138/634, 75 S. E. 1122.

Question as to entry, disallowed. *Ha-good*, 5 A. 85, 62 S. E. 641.

Entries read in evidence, permitting whole book to go to jury not reversi-

ble error here. **Bridges**, 110/246, 34 S. E. 1037.

Testimony based on entries, when competent and when not. **Akins**, 111/815, 35 S. E. 671; **Jenkins**, 111/734, 36 S. E. 945; **Southern Home B. & L. Asso.**, 111/826, 35 S. E. 679.

Entries, when relevant on defense of payment of note sued on. **Blackshear**, 120/766, 48 S. E. 311.

Entry, when no error in ruling out testimony as to. **Martin**, 137/288, 73 S. E. 387.

City council minute book, admitted on what proof of genuineness. **City of Columbus**, 102/294, 29 S. E. 749.

Book of ordinances of town, admissibility of. **Stone**, 131/452, 62 S. E. 592.

Minute book of county commissioners, when admissible on issue as to public road. **Penick**, 131/386, 62 S. E. 300.

Boundaries of adjacent lands, grants issued therefor admitted to show. **Pritchett**, 102/21, 29 S. E. 210.

Line of land in controversy; admissibility of deed from owner of abutting land. **Roberts**, 146/490, 91 S. E. 675.

Brief of evidence on former trial, admissibility of extracts from. **Burch**, 125/158, 53 S. E. 1008.

Admissibility of testimony from, on subsequent trial. **Denson**, 111/809, 35 S. E. 680; **Owen**, 111/885, 36 S. E. 969.

On former trial, testimony in, how proved. **Georgia Engineering Co.**, 135/58, 68 S. E. 794.

Approval and identification of documents must appear. **Jones**, 145/569, 89 S. E. 681; **Springer**, 145/730, 89 S. E. 780.

Essential to review; filing of affidavits and documents as record is no substitute. **Weathers**, 147/463, 94 S. E. 579.

Requires abbreviation of documents therein contained. **Henslee**, 148/621, 97 S. E. 667.

By-law of corporation, how proved. **Fraternel Relief Asso.**, 9 A. 44, 49 70 S. E. 265.

When no error in rejecting, in suit on contract. **Georgia Engineering Co.**, 135/58, 68 S. E. 794.

Cancellation entered on insurance policy, admissibility of. **McLeod**, 20 A. 228, 92 S. E. 1014.

Certificate, description by, of officer making it, when sufficient. **Anderson**, 121/129, 48 S. E. 951, 2 Ann. Cas. 165.

Of death, admissibility of. **Supreme Council**, 23 A. 104, 97 S. E. 557.

Of marriage, effect of, as evidence. **Norman**, 121/456, 49 S. E. 268.

Of officer not competent to prove absence of paper or document from public records. **Greer**, 104/552, 30 S. E. 943.

Of officer that his records show or do not show certain facts, not admissible. **Daniel**, 113/373, 38 S. E. 829. See **Finney**, 113/364, 38 S. E. 818.

Of referee in bankruptcy, when admissible, to show appointment of trustee. **Harrell**, 121/608, 49 S. E. 703.

Of Secretary of State, as to result of election as to removal of county-site, when not admissible, to attack legislative act providing for removal. **Cutcher**, 105/181, 31 S. E. 139.

Of stock, when not admitted without proof of genuineness of signatures. **Whitaker**, 11 A. 209, 75 S. E. 258.

From without the State, when not received in Supreme Court. **Whatley**, 104/764, 30 S. E. 1003.

Of clerk and judge of other State, to authenticate record and judgment, what sufficient. **Little Rock Co.**, 112/527, 37 S. E. 743. Requirements as to. **Taylor**, 118/874, 45 S. E. 672.

Of public officer as, when not exclusive. **Lee**, 130/43, 60 S. E. 164. Provision that certificate of public officer shall be sufficient does not preclude legislature from ascertaining existence of facts by other appropriate means. **Lee**, 130/43, 60 S. E. 164.

Of tax return should convey transcript instead of saying what it discloses. **McMillan**, 133/761, 66 S. E. 943.

Of unofficial person not sufficient to render copy of deed admissible. **Dy-**

son, 130/573, 61 S. E. 468, 124 Am. St. R. 179.

To transcript of record, by ordinary having no clerk; what suffices. *Sellers*, 127/634, 56 S. E. 1011. When sufficient as showing he had no clerk. *Weeks*, 133/472, 66 S. E. 168, 134 Am. St. R. 213.

Certified copy, admissibility of. *Robertson*, 127/176, 56 S. E. 289. In ejectment. *Graham*, 137/668, 74 S. E. 426. Municipal ordinance, and, section of city code. *Nashville Ry. Co.*, 134/618, 68 S. E. 432; *Cason*, 134/787, 68 S. E. 554. Of deed record, original lost. *Flint River Lumber Co.*, 134/627, 68 S. E. 436.

From tax digest, admissible, to show what property was returned by taxpayer. *Baker*, 10 A. 679, 73 S. E. 1075.

In due form, not rejected for erasures, different ink, etc., appearing in original. *Smith*, 127/486, 56 S. E. 640.

Is primary evidence of contents of book or paper required to be kept in office. *Daniel*, 114/533, 40 S. E. 305. Of deed. *Holtzclaw*, 114/171, 39 S. E. 849; *Leggett*, 114/714, 40 S. E. 736; *Crummey*, 114/750, 40 S. E. 765.

Certified copy, not original of court paper, admissible. *Georgia Engineering Co.*, 135/58, 68 S. E. 794; *Hall*, 12 A. 492, 77 S. E. 878. General rule that certified copy of court record should be put in evidence instead of original; facts constituting exception to rule. *Kent*, 18 A. 31 88 S. 913.

Of court minutes, admissible in controversy over fees between sheriff and deputy. *Bynum*, 137/250, 73 S. E. 400, Ann. Cas. 1913A, 903.

Of deed not admissible without foundation for secondary evidence. *Alaculsey Lumber Co.*, 146/310, 91 S. E. 104.

Of deed, when admissible, and when not. *Denny*, 118/221, 44 S. E. 982; *Cox*, 118/414, 45 S. E. 401.

Offered but withdrawn on objection, not subject to be delivered to objector on demand. *Graham*, 101/121, 28 S. E. 609.

Of foreign letters of administration, when not admissible. *Taylor*, 118/784, 45 S. E. 672.

Of letters testamentary from other State, admissible. *Heatley*, 135/154, 68 S. E. 783.

Of plat and grant, when admissible. *Reppard*, 103/198, 29 S. E. 817.

Of lost plat and grant, when admissible. *Shingler*, 135/666, 70 S. E. 563.

Of mortgage, when admissible. *Sims*, 2 A. 466, 58 S. E. 693.

Of recorded mortgages and notes, not admissible, if no reason shown for not producing originals. *Kelley*, 147/741, 95 S. E. 287.

Of municipal minutes and records must be under corporate seal, to be admitted. *Sewell*, 145/19, 88 S. E. 577.

Of ordinance admissible. *Macon R. Co.*, 127/481, 56 S. E. 616.

Of original office paper is primary evidence. *Harvard*, 145/581, 89 S. E. 740.

Of record from ordinary's court, what necessary to admit. *Lay*, 112/111, 37 S. E. 132; *Smallwood*, 129/50, 58 S. E. 640; *Phillips*, 5 A. 634, 63 S. E. 808.

Of record of court where case is tried, not needed if record itself produced, on interlocutory or final hearing. *Sellers*, 127/634, 56 S. E. 1011.

Of record of deed not legally attested, inadmissible. *Simmons*, 144/845, 88 S. E. 199.

Original papers may be received in lieu of, by agreement. *Hinkle*, 133/255, 65 S. E. 427. When not receivable before accounting for original. *McMillan*, 133/761, 66 S. E. 943.

By internal revenue collector, from his records showing all who paid taxes, admissible, to show payment of tax by a certain person. *Huckabee*, 7 A. 677, 67 S. E. 837; *Daniel*, 11 A. 800, 76 S. E. 162.

Of acknowledgment of service, admitted. *James*, 17 A. 578, 87 S. E. 842.

Of proceedings, proper mode of proving nature and result of suit. *Kennedy*, 18 A. 150, 88 S. E. 1000.

From comptroller-general's office, of lost fi. fa., when need not be introduced, to show contents of original. *Hilton*, 107/821, 33 S. E. 715.

From record, not receivable unless paper be admissible to record. *Turner*, 141/27, 80 S. E. 461.

When not admissible instead of original paper. *Pritchett*, 101/236, 28 S. E. 686.

Instead of original record, is proper evidence. Original not incompetent. *Copeland*, 147/602, 95 S. E. 13.

From record of deeds, admissible. Error in admitting record itself. *Peeples*, 140/610, 79 S. E. 466.

From record of instrument in possession of accused, admissible against him, unless he offers to produce original. *Kinard*, 1 A. 146, 58 S. E. 263; *Mahan*, 1 A. 534, 58 S. E. 265.

Of document in office of department of U. S. government, when admissible. *O'Connor*, 11 A. 246, 248, S. E. 110.

Of established copy of lost original, admissible to same extent as certified copy of the original. *McLanahan*, 119/65, 45 S. E. 785.

Of paper required to be kept on file in office of official of executive department of the State, primary evidence. *Branan*, 119/741, 46 S. E. 882.

Of order of court, when admissible without pleadings on which based. *Ocean S. Co.*, 107/223, 33 S. E. 179.

Of recorded mortgage, admissible on proof of loss of the original. *Lee*, 138/646, 75 S. E. 1051. When loss not legally established. *McNatt*, 143/159, 160, 84 S. E. 447.

Of will, when not excluded because probate not alleged. *Fowler*, 138/786, 76 S. E. 85.

See catchword "Copy," *infra*.

Certified transcript from docket in other State, when not admissible. *Mason*, 135/741, 70 S. E. 225, 33 L. R. A. (N. S.) 280.

Of record from other State, admis-

sible over objection presented. *Hope*, 142/310, 82 S. E. 929.

Certiorari petition, admissibility of, for purpose of impeaching witness by proof of testimony set out therein. *Harper*, 14 A. 603, 81 S. E. 817.

Check as evidence of payment. *Simmons*, 111/239, 36 S. E. 685.

Notation on, as evidence. *Armour Fertilizer Works*, 15 A. 277, 82 S. E. 907.

Relevancy of testimony on issue as to presentation of, within reasonable time. *Kennedy*, 140/303, 78 S. E. 1069, Ann. Cas. 1914D, 355.

Given in payment, admissibility of. *City of Atlanta*, 19 A. 694, 92 S. E. 28. **Circulars**, admissibility of, and of oral testimony as to, on trial of one charged with soliciting orders for liquor. *Cashin*, 18 A. 87, 88 S. E. 996.

Circumstantial, as to issuance of bill of lading, way-bill was. *Southern Ry. Co.*, 1 A. 736, 58 S. E. 244.

City ordinance as to speed of trains and engines, irrelevant as to electric street-cars. *Hill*, 101/66, 28 S. E. 631.

Pleading sufficient for introduction of. *Atlanta Con. St. Ry. Co.*, 108/223, 33 S. E. 886.

Claim case; plaintiff may introduce mortgage, rule absolute, and fi. fa., without the notes or the petition to foreclose and entry of service. *Ray*, 110/305, 35 S. E. 117. Mortgage of defendant in execution was relevant to issue on trial of. *Long*, 132/66, 63 S. E. 700. Claim affidavit, when not admissible in suit as to the same property between others than the claimant. *Equitable Securities Co.*, 113/1013, 39 S. E. 434.

Clerical error in certified copy of court paper, when does not render it inadmissible. *Daniel*, 114/533, 40 S. E. 805.

Color of title, deed not properly executed is not, though recorded. *Gray Co.*, 127/693, 56 S. E. 252.

Deed admissible as. *Williamson*, 136/222, 71 S. E. 138.

Deed admissible as, signed by one of several owners. *Hansen*, 132/649, 64

S. E. 800; *Tarver*, 132/798, 65 S. E. 177, 24 L. R. A. (N. S.) 1161.

Deed unexecuted, not admissible as. *Causey*, 143/8, 84 S. E. 58.

Deed without power of attorney, admissible as. *Gilmer*, 146/721, 92 S. E. 67.

Sheriff's deed admissible as. *Wood*, 145/259, 88 S. E. 980. Tax deed with execution admissible. *Willis*, 145/483, 89 S. E. 427.

Commitment trial, writing by magistrate, purporting to contain testimony on, but prepared after trial, from memory, admissibility of. *Haines*, 109/528, 35 S. E. 141.

Admissibility of commitment entry on warrant, as original evidence. *McCalman*, 121/495, 49 S. E. 609.

Common grantor, title held under, not shown merely by deed from person alleged to be such. *McConnell*, 114/84, 39 S. E. 941.

Comparison of handwriting, proof of signature by. *Wilson*, 10 A. 99, 72 S. E. 943; *Paulk*, 8 A. 738, 70 S. E. 145.

Of writings, to prove handwriting, paper offered for, must be submitted to opposite party before trial. *Axson*, 103/578, 30 S. E. 262.

Compromise, letters inaugurating negotiations for, inadmissible. *Thornton*, 116/133, 42 S. E. 287, 94 Am. St. R. 99; *Kelly*, 116/875, 43 S. E. 280.

Letter written with view to, and testimony as to same, properly excluded. *County of Butts*, 135/27, 68 S. E. 786.

Contemporaneous writings, as explanatory of deed. *McCreary*, 103/522, 29 S. E. 960.

Contract by correspondence. proof of. *Hollister*, 9 A. 176, 70 S. E. 970.

Non-execution of insurance policy by lodge, shown by testimony of its secretary. *Hester*, 8 A. 382, 69 S. E. 31.

Of municipal corporation, shown by minutes; when not contradicted by testimony. *Mayor &c. of Gainesville*, 145/299, 89 S. E. 210.

Sued on, when admissible without producing subscribing witness. *National Scale Co.*, 116/511, 514, 42 S. E.

783. Over objections that it appears to have been altered. *Heard*, 116/933, 43 S. E. 375.

Instrument offered as, not shown to have been delivered, not admitted. *Hartman*, 8 A. 261, 68 S. E. 957.

Construction of, not involved; irrelevant to show that it was drawn after a certain form. *Richter*, 143/470, 85 S. E. 319.

Evidence of differing meaning from that expressed in, excluded. *Dolvin*, 131/300, 62 S. E. 198. See *Austia*, 131/295, 62 S. E. 196.

Is what the parties agreed; writing is merely evidence of it. *Dannelly*, 131/700, 63 S. E. 257.

Not excluded because of discrepancy between it and deposition as to its date. *Ballew*, 16 A. 149, 84 S. E. 597.

Of corporation with trustee for bondholders, evidence of authority to make. *Steed*, 136/696, 71 S. E. 1116.

Of corporation, excluded, authority of officers to execute it not appearing. *Brown*, 132/41, 63 S. E. 788.

Proof of execution of, when necessary. *McGovern*, 8 A. 277, 68 S. E. 951.

Several instruments as constituting; what reference sufficient. *Timmons*, 141/720, 82 S. E. 29.

Testimony that defendant was present and approved, when signed, held inadmissible. *Miller*, 145/617, 89 S. E. 689.

Conveyance of land, instrument without words of, admissible as estoppel of heir who signed it. *Allen*, 146/204, 91 S. E. 22.

Conviction of crime, plea, verdict, and judgment not sufficient to prove, without copy of indictment. *Lewis*, 23 A. 647, 99 S. E. 147.

Copy or original docket entry admissible to show judgment of justice's court. *Harrell*, 21 A. 525, 94 S. E. 830.

Of bankruptcy proceeding certified by referee, when admissible. *Morgan*, 120/502, 48 S. E. 238. Or by clerk of bankruptcy court. *McLanahan*, 119/164, 45 S. E. 785.

Copy—(Continued).

Of court paper, proper officer to certify to, is the legal custodian of the original. *McLanahan*, 119/64, 45 S. E. 785.

Compared with original paper since lost or destroyed, when admissible. *Landrum*, 145/307, 89 S. E. 201.

Duplicate, admissibility of. *Rogers-McRorie Co.*, 13 A. 495, 79 S. E. 374. Carbon copy not received as duplicate original. 18 A. 181, not followed. *Ward-Truitt Co.*, 23 A. 672, 99 S. E. 153.

Of notice (carbon impression), admissibility of. *Anderson*, 141/840, 82 S. E. 246.

Established, alias tax execution not available as, to support sheriff's sale made under the original. *Carr*, 108/757, 33 S. E. 190.

From record, of deed, attacked as forgery, error in admitting here. *Bentley*, 119/530, 46 S. E. 645.

Not admissible, before proving existence of genuine and authorized original paper. *Brown*, 132/41, 63 S. E. 788.

Copy, not original, of paper relied on as evidence should be attached to pleading. *Johnson*, 134/801, 68 S. E. 731.

Of certificates and tally-sheets of election, as evidence of vote received. *Glover*, 122/769, 50 S. E. 956.

Of deed, admissibility of. *Harkless*, 115/351, 41 S. E. 634. *Acme Brewing Co.*, 115/494, 42 S. E. 8; *Griffin*, 115/613, 41 S. E. 1003. Foundation for introduction of. *Shirley*, 105/504, 31 S. E. 105. From registry of deeds, admissibility of. *Cox*, 118/414, 45 S. E. 401.

Of deed, judgment establishing, conclusive. Evidence to show non-delivery of original, excluded. *Graham*, 137/668, 74 S. E. 426.

Of demand for money alleged to have been embezzled, admissible here. *Vaughn*, 17 A. 268, 86 S. E. 461.

Of foreign judgment, admissibility of. *Clein*, 17 A. 652, 87 S. E. 1101.

Of grant received, no reason for rejecting the original when offered later. *Tarver*, 132/799, 65 S. E. 177, 24 L. R. A. (N. S.) 1161.

Copy—(Continued).

Of letter should be identified as such, before it is admitted as secondary evidence. *Frost*, 10 A. 96, 72 S. E. 719. Copy admitted, to show difference between original paper and paper as altered, when. *Wilson*, 10 A. 99, 72 S. E. 943.

Of letter written by witness, used by him to refresh his recollection and attached to his interrogatories, not admissible without accounting for original. *New England Mortgage Co.*, 120/1010, 48 S. E. 396.

Of lost deed not established, where evidence fails to show literal or substantial copy. *Western Lodge*, 101/62, 28 S. E. 494. Insufficient proof of loss. From registry, not admissible where but one witness. *Bower*, 126/35, 54 S. E. 918. Right of action by heir to establish. Admissibility of evidence. *Orr*, 145/137, 88 S. E. 669.

Of lost original paper, established without notice to other parties pending suit, objectionable. *Selph*, 136/740, 72 S. E. 31.

Of lost paper; copy in approved brief of evidence of former trial, admitted. *Crawford*, 4 A. 789, 62 S. E. 501.

Of lost record, establishment of, on notice, pending cause in which it is to be used. *Nixon*, 137/516, 73 S. E. 747.

Of map of county, when admissible. *Berry*, 117/964, 44 S. E. 824.

Of mortgage, admissibility of. *James*, 10 A. 266, 73 S. E. 407.

Of notes and mortgage, not admissible without reason shown for non-production of originals. *Kelley*, 147/741, 95 S. E. 287.

Of record excluded, where no evidence of who made original, or as to its correctness. *Gulfport Co.*, 135/198, 69 S. E. 160.

Of note lost, when admissible. *Smith*, 3 A. 199, 59 S. E. 593.

Of official analysis of fertilizer, when admissible. *Arlington Oil & Guano Co.*, 13 A. 563, 79 S. E. 476.

Of paper required to be registered, admissible when loss of original shown. What showing sufficient; discretion of

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court as to. **Hayden**, 103/431, 30 S. E. 287.

Of record from other State, authentication of. **Conrad**, 123/242, 51 S. E. 299.

Of record of U. S. court admitted. **Kent**, 18 A. 31, 88 S. E. 913.

Of record is primary evidence, and original record secondary. **Belt**, 103/13, 29 S. E. 451; **Richardson**, 103/741, 30 S. E. 573.

Of registry instrument required to be recorded, duly certified, presumptive of original. **Sims**, 2 A. 466, 58 S. E. 693.

Attached to interrogatories, when not rendered admissible by statement of witness. **Mason**, 135/741, 70 S. E. 225, 33 L. R. A. (N. S.) 280.

Of will probated in other State, what necessary to admit. **Youmans**, 122/331, 50 S. E. 141.

Not rendered admissible by undertaking to certify to admission or plea of guilt. **Mason**, 135/742, 70 S. E. 225, 33 L. R. A. (N. S.) 280.

Paper not excluded on the ground that it did not show on its face whether it was original or a copy. **Sharpe**, 121/798, 49 S. E. 775.

Proof preliminary to introducing; execution of original proved by circumstantial evidence. **Proctor & Gamble Co.**, 128/617, 57 S. E. 879.

Corporation, decision appointing receivers for, on expiration of charter, when admissible. **Brooks**, 130/213, 60 S. E. 456.

Deed of, authority to execute, must appear. **Taylor**, 134/479, 68 S. E. 70. When sufficient as to this. **Jones**, 134/553, 68 S. E. 303; **Flint River Lumber Co.**, 134/627, 68 S. E. 436.

Deed of, executed by secretary and treasurer, without seal, not admissible, authority not appearing. **Jenkins**, 144/44, 85 S. E. 1042.

Minutes admissibility of. **Great Southern Accident Co.**, 13 A. 288, 79 S. E. 162.

Minutes as evidence; proof of authenticity. **Bridges**, 15 A. 291, 82 S. E. 925.

Relations of, with member, to be shown only by records. **Fraternal Relief Assn.**, 9 A. 54, 55, 70 S. E. 265.

Witness may testify that securities were never delivered to, irrespective of what minutes show. **Fouche**, 110/827, 36 S. E. 256.

Acts of, competency of evidence to prove. **Bank**, 138/799, 76 S. E. 95.

Contract of, or authority of corporate agent, proved by minute-book of directors' meetings. **Torras**, 108/348, 33 S. E. 989.

Seal of, when not necessary, to render admissible a paper purporting to be contract of corporation. **Swift**, 15 A. 255, 82 S. E. 914. Absence of seal, no cause for excluding instrument, if its execution be admitted. **Real Estate Bank**, 145/831, 90 S. E. 49.

Correspondence between principal and agent admissible in suit on bond for agent's fidelity. **Moorefield**, 135/186, 69 S. E. 119.

Constituting and connected with contract, error in excluding. **Hollister**, 9 A. 176, 70 S. E. 970.

Held to control, on conflict with oral testimony. **Grier**, 120/353, 355, 47 S. E. 898.

Court, proper evidence of adjournment of. **Southern Ry. Co.**, 120/524, 48 S. E. 160. Proceedings, how proved. **Kinney**, 14 A. 182, 18, 80 S. E. 663; **Anglin**, 14 A. 566, 81 S. E. 804. Proceedings in open court, instead of at chambers (as recited), evidence to show, rejected. **Morehead**, 131/807, 63 S. E. 507.

Deceased accomplice's testimony in committing trial, when proved on final trial. **Hardin**, 107/718, 33 S. E. 700.

Deceased witness, affidavit of, used on interlocutory hearing, not admissible on final trial. **Fender**, 131/440, 62 S. E. 527.

Testimony given by, on trial of former criminal case, when admissible against same defendant to civil action. **Heatley**, 135/154, 68 S. E. 783.

Testimony of, in agreed brief received. So his other testimony not includ-

ded in brief. *City*, 102/294, 29 S. E. 749.

Or inaccessible witness, testimony of, how proved. *Smith*, 147/689, 95 S. E. 281; *Hunter*, 147/823, 95 S. E. 668.

Testimony of, on former trial of suit by father as next friend, not admissible on trial of suit by him for loss of minor's services. *Hooper*, 112/96, 37 S. E. 165.

Decree or judgment, proof of, with and without the whole record. *Kerchner*, 106/437, 32 S. E. 351.

Admissible as color of title, in litigation with one not party nor privy thereto. *Wardlaw*, 106/29, 31 S. E. 785.

Adversely affecting title, without pleadings on which based, when error to admit. *Bedingfield*, 143/563, 85 S. E. 856.

Of divorce, admissible in contest over money from insurance on life of husband. *Meldrim*, 140/400, 78 S. E. 1089.

Unaccompanied by verdict; objection not meritorious where verdict copied in decree. *Whatley*, 139/148, 76 S. E. 1025.

Without pleading on which it was based, error in admitting. *Moye*, 146/600, 91 S. E. 682.

Deed and recital therein, competency of. *Nixon*, 137/516, 73 S. E. 747.

Admissibility of, as color of title, and for other reasons. *Turner*, 141/27, 80 S. E. 461. Where caption altered. *McConnell*, 134/95, 67 S. E. 440. As evidence of settlement of debt. *Wardlaw*, 13 A. 594, 79 S. E. 523. See *Deeds*. In action of trespass by removing and destroying timber. *Shippen Lumber Co.*, 136/37, 70 S. E. 672. On issue of title between wife and later grantee of husband. *Oats*, 136/704, 71 S. E. 1097. On trial of claim. *Stewart*, 135/112, 68 S. E. 1037. To show ratification. *Davis*, 137/451, 73 S. E. 579.

Admissible evidence as to delivery of. *White Sewing Machine Co.*, 17 A. 48, 86 S. E. 257.

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Admissible in connection with testimony as to dates of execution and registry, objection being that these on its face are false. *Carr*, 108/757, 33 S. E. 190.

Admissible, over objections on special facts. *Miller*, 145/617, 89 S. E. 689.

Admissible to prove, with other evidence, elements of equitable ownership of land. *Wall*, 143/417, 85 S. E. 325.

Assignment of error as to admission of, not in proper form. *City of Moultrie*, 11 A. 649, 75 S. E. 991.

As to which perjury was alleged to have been committed, not excluded from evidence because not identical with description in indictment. *Mallard*, 19 A. 100, 90 S. E. 1044.

Executed and delivered to defendant after ejectment suit commenced, when admissible. *Swint*, 147/467, 94 S. E. 571.

Objection to, as "inadmissible," too indefinite. *Washington Exchange Bank*, 23 A. 356, 98 S. E. 418.

Of heirs quitclaiming, recitals in, were not admissible. *Marchant*, 147/38, 92 S. E. 863.

Return or surrender of, by grantee when admissible. *Marchant*, 147/37, 92 S. E. 863.

Under seal, on power of attorney not sealed, not admissible. *Henderson*, 147/371, 94 S. E. 251.

Best evidence of its contents; should generally be accounted for before copy admitted. *McMillan*, 133/761, 66 S. E. 943.

Cancellation of; inadmissibility of testimony as to declaration of grantee. *Purvis*, 144/16, 85 S. E. 1012.

Consideration and delivery of, inquired into. *Holmes*, 106/861, 33 S. E. 216.

Consideration of, admissibility of proof as to. *Harkless*, 115/351, 41 S. E. 634; *Martin*, 115/871, 22 S. E. 279.

Consideration of, may be shown to be voluntary, though purporting to be

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for value. *Leggett*, 114/714, 40 S. E. 736.

Conveying contingent remainder, when not admissible as basis of recovery. *Town of Decatur*, 144/728, 87 S. E. 1036.

Entry on back of, may be relied on by party opposed to him who introduces deed, and who has burden of explaining. *McBrayer*, 122/245, 50 S. E. 95.

Evidence that instrument construed as, was a will and not a deed, rightly rejected. *Islor*, 134/192, 67 S. E. 854.

Evidence that purchaser under, bought in good faith and without actual notice, relevant. *Islor*, 134/192, 67 S. E. 854.

Explained by contemporaneous writings. *McCreary*, 103/528, 29 S. E. 960.

From heirs, and proof of their possession, relevant as basis of title. *Davitt*, 108/667, 34 S. E. 327.

From partnership, when not excluded because not executed by all partners. *Shippin Lumber Co.*, 141/367, 80 S. E. 1002.

Inadmissible as conveyance of title, if receivable as color, should be expressly so offered. *Weeks*, 133/472, 66 S. E. 168, 134 Am. St. R. 213.

Inadmissible without examining or accounting for absence of attesting witnesses. *Howard*, 104/231, 30 S. E. 802.

In evidence, no harm in permitting witness to state to whom it was made. *Roberts*, 136/790, 72 S. E. 239.

Lost, both its existence and due execution necessary to justify secondary evidence of contents. *Smith*, 106/303, 31 S. E. 762.

Certified copy of record admitted. *Flint River Lumber Co.*, 134/627, 68 S. E. 436; *Holtzclaw*, 114/171, 39 S. E. 849; *Leggett*, 114/714, 40 S. E. 736. Not so, if recorded unlawfully, without proof of due execution, loss, and substantial correctness of copy offered. *Crummey*, 114/746, 40 S. E. 765. Showing required as to, before

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admitting certified copies from record. *Denny*, 118/221, 44 S. E. 982; *Cox*, 118/414, 45 S. E. 401. Certified copy of proceedings establishing, admissible where original deed would be. *Leggett*, 114/714, 40 S. E. 736.

Motive of grantor in making; testimony objectionable as opinion. *Huger*, 137/205, 73 S. E. 385.

Not admissible for plaintiff in complaint for land, if not recited in abstract of title or amendment. *Lee*, 120/529, 48 S. E. 129.

Not admissible to record, certified copy of record not admissible as such. *Landrum*, 145/307, 89 S. E. 201.

Not objectionable as not being link in chain of title; possession thereunder shown. *Guest*, 145/593, 89 S. E. 687.

Not recorded, and execution not proved, not admissible. *Wilson*, 141/790, 791, 82 S. E. 241.

Not recorded or improperly recorded, but duly filed for record, admissible as registered deed, without further proof. *Durrence*, 117/385, 43 S. E. 726.

Objection to, immaterial, in view of admission as to title. *Town of Wrens*, 129/755, 59 S. E. 776.

Offered to prove a fact which the plaintiff had admitted in his testimony; exclusion not error. *Allen*, 125/336, 54 S. E. 176. Not tending to establish plaintiff's title, exclusion not cause new trial. *Corker*, 125/428, 54 S. E. 92. To common grantor of plaintiff and defendant immaterial. *Ib.*

Offered to show that defendant claimed under same grantor as plaintiff, not inadmissible because order confirming it is detached when deed offered. *Brinkley*, 131/226, 62 S. E. 67.

Of parent to child made pending suit by child for damages against third person, when admissible. *Towaliga Falls Co.*, 136/397, 71 S. E. 731.

Of testator to his sons, written contract of purchase, and testimony of witness, admissible. *Johnson*, 139/219, 77 S. E. 73.

Deed—(Continued).

Of trust, for minors, not inadmissible because not recorded in three months. *Heatley*, 135/154, 68 S. E. 783.

Delivery and acceptance of, sufficiently appeared, relatively to rights of one who loaned money to vendee. *Goodwynne*, 116/906, 43 S. E. 275. Record prima facie evidence of delivery. *Ib.*

Presumption of delivery, evidence competent to rebut. *Scarborough*, 127/257, 56 S. E. 293.

Quitclaiming, duly attested and recorded, admissible as registered deed. *Gilmer*, 146/721, 92 S. E. 67. Was admissible over objection. *Dennard*, 142/171, 82 S. E. 558.

Recitals, as evidence. *Lanier*, 123/626, 51 S. E. 632. Not evidence as against others than parties thereto. *Dixon*, 112/158, 37 S. E. 180; *Gilmer*, 146/721, 92 S. E. 67.

Reciting consideration of "— dollars," admissible. *Jewell*, 109/241, 34 S. E. 337.

Reciting that it is made in lieu of lost original, what necessary for admission of. *Carrie*, 145/184, 88 S. E. 949.

Showing title acquired after trespass, not admitted on trial of action therefor. *L. & N. R. Co.*, 134/107, 67 S. E. 652. See *Alaculsey Lumber Co.*, 134/603, 68 S. E. 427.

Sufficiency of preliminary proof to admit copy, how shown to reviewing court. *Foreman*, 8 A. 823, 70 S. E. 158.

Taken by plaintiff pending suit, in lieu of lost deed, when not admissible. *Lee*, 138/646, 75 S. E. 1051.

Testamentary instrument not admissible as. *Jackson*, 148/314, 96 S. E. 630.

Testimony of mistake in, when not receivable. *Roberts*, 136/790, 72 S. E. 239.

Testimony that it was made in pursuance of order of court, when not admissible. *Thompson*, 134/80, 67 S. E. 446.

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Testimony that maker was non compos mentis and signed on Sunday, when irrelevant. *Thomas*, 134/606, 68 S. E. 323.

That grantor and grantee denied execution of; that grantee had not the money consideration recited; that grantor remained in possession and claimed the property, etc.; when no error in excluding. *Leathers*, 132/213, 63 S. E. 1118.

That purported signer could not write, admissible. *Hansen*, 132/649, 64 S. E. 800.

To secure debt, admissibility of, in contest between judgments, to show priority of general judgment for the debt secured. *Tripod Co.*, 111/823, 35 S. E. 696.

To show title, must be supported by proof of title or possession in the grantor. *Taylor*, 134/479, 68 S. E. 70.

Transfer of, when admissible though not sufficient of itself to convey title. *Tillman*, 134/660, 68 S. E. 504.

Under order of court (by administrator, guardian, or trustee), not admissible as conveyance without proof of decree or order. *Brown*, 141/420, 81 S. E. 196; *Hilton & Co.*, 141/654, 81 S. E. 1119.

Voluntary character of, evidence not sufficient to show. *Pierce*, 120/536, 48 S. E. 128.

When error to exclude, for excessiveness of levy of tax execution. *Lupo*, 134/695, 68 S. E. 479.

Whether as security for debt, or as absolute conveyance of title; relevancy of testimony. *McGarr*, 143/97, 98, 84 S. E. 435.

Unrecorded, testimony of contents. *McConnell*, 134/95, 67 S. E. 440.

When deeds admissible to show acquiescence in arbitration. When not to show estoppel. *Murrelle*, 142/41, 82 S. E. 456. Deeds relevant as muniments of title. *Livingston*, 132/1, 63 S. E. 694. Made by defendants to action for equitable accounting, how ad-

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missible. **Peyton**, 145/179, 88 S. E. 937. Conveying parcels of land different from that in dispute, when relevant. **Lee**, 124/495, 52 S. E. 806.

Description, certainty, of, in deed, required for admission as conveyance and as color of title. **Harden**, 143/727, 85 S. E. 874.

In contract referred to in deed conveying timber, contract admissible. **Shippen Lumber Co.**, 136/37, 70 S. E. 672.

240 acres in 2d district, fatally defective. **Williams**, 2 A. 629, 58 S. E. 1071.

Administrator's deed not void for insufficiency of, containing what data. **Davis**, 143/99, 84 S. E. 426.

By name of the property prevails over further imperfect or uncertain one. **Bunger**, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173.

Boundary, how fixed, by measurement. Deed controls over testimony of prior setting of stake, etc. **Bell**, 133/5, 65 S. E. 90.

Not sufficient, taken with plat, to identify it; deed not admissible. **Lane**, 148/650, 97 S. E. 852. Deed sufficiently describing land, not to be rejected for absence of plat to which it refers. **Aiken**, 134/873, 68 S. E. 937.

Not too indefinite. **Morris**, 145/562, 89 S. E. 704; **Stewart**, 145/590, 89 S. E. 686; **Guest**, 145/593, 89 S. E. 687; **Vaughn**, 112/517, 37 S. E. 752.

When sufficient. Aliunde evidence, when admissible. **Davis**, 143/99, 84 S. E. 426. Not sufficient. **King**, 143/385, 85 S. E. 95; **Hutchinson**, 145/325, 89 S. E. 208; **Torbit**, 145/610, 89 S. E. 696; **Miller**, 145/617, 89 S. E. 689.

Of boundary in deed as land of person with defective title, when supported. **O'Farrel**, 134/696, 68 S. E. 485.

Indefinite, not render bond for title inadmissible. **Tumlin**, 108/520, 34 S. E. 171.

Instrument containing both note and mortgage not excluded for want of. **Foddrill**, 131/790, 63 S. E. 350.

Order for administrator's sale of land was admissible over objection for lack of. **Davis**, 143/99, 84 S. E. 426. See **Harden**, 143/727, 85 S. E. 874.

Deed sufficient as to, giving boundaries. **Morris**, 145/562, 89 S. E. 704.

Deed not rejected as not identifying land; extrinsic evidence admissible to identify. **Morris**, 145/562, 89 S. E. 704.

Deed with indefinite description not admissible. **Whitehead**, 127/774, 56 S. E. 1004.

Deed to land described therein as in a county different from that of land sued for, not admissible as muniment of title, when. **Nichols**, 115/600, 41 S. E. 991.

Deed not rejected for insufficient description of part of larger tract. **Guest**, 145/593, 89 S. E. 687.

Deed as conveyance or color of title; when admissible over objection for want of description, though requiring aid of adminicular proof. **Hilliard**, 147/15, 92 S. E. 634; **Avera**, 147/24, 92 S. E. 533.

Diagram, admissibility of; when not rendered inadmissible by descriptive words written on it. **Stiles**, 113/700, 39 S. E. 295.

Dismissal of action, docket entry conclusive as to, when. **Smith**, 22 A. 505, 96 S. E. 342.

Divorce not proved by declarations; nor by records showing but one verdict and entry of dismissal. **Wilson**, 108/275, 33 S. E. 975.

Record of suit for, when admissible on trial for uxoricide. **Lucas**, 146/315, 91 S. E. 72.

Docket of justice of the peace, as well as exemplification from it, admissible. **Singer**, 126/45, 54 S. E. 821. To show service. **Battle**, 107/128, 130, 32 S. E. 838.

Entries of justice of peace, highest evidence of judgment by him. **Barnes**, 22 A. 214, 95 S. E. 757; **Gittens**, 12 A. 141, 76 S. E. 1051.

Effect of entries, as evidence. **Smith**, 22 A. 505, 96 S. E. 342; **Dixon**, 132/347, 64 S. E. 71; **Sumner**, 121/112, 48

S. E. 727. When judgment of justice of the peace may be proved otherwise. *McCalman*, 121/495, 49 S. E. 609.

Entry by judge, not ambiguous, not vacated or reformed, not collaterally attacked. *Thornton*, 101/608, 29 S. E. 24.

Entry, certified copy of, proves dismissal of cause. *Clarke*, 112/634, 37 S. E. 870.

Document admitted without proof of execution and delivery, not ground for new trial, where such proof was afterwards supplied. *Fletcher*, 20 A. 653, 93 S. E. 313.

Excluded from evidence, but, by inadvertence, delivered to jury; no cause for new trial, where not read or considered. *Eminent Household*, 11 A. 733, 76 S. E. 99.

Improperly obtained, not excluded. *Cabaniss*, 8 A. 146, 68 S. E. 849.

Interlineation in, as affecting admissibility. *Fraternal Relief Asso.*, 9 A. 44, 54, 70 S. E. 265.

Parol description of, allowed, when. *Sasser*, 9 A. 178, 70 S. E. 980. Description of, by witness, for purpose of identification, allowed when. *Cabaniss*, 8 A. 130, 68 S. E. 849.

Produced on notice from opposite party, rule as to admissibility without proof, not prevent objection because of irrelevancy or secondary nature. *Fraternal Relief Asso.*, 9 A. 45, 70 S. E. 265.

Not properly part of prisoner's statement to jury. *Nero*, 126/55, 55 S. E. 404.

Sent enclosed with letter, fact admissible without introducing the letter. *Clarke*, 115/883, 42 S. E. 264.

Mutilated; inferences against guilty party. *Gorham*, 137/139, 72 S. E. 893.

Partly introduced, right of opposite party, as to remainder. *Crawford*, 126/763, 55 S. E. 499. Documents offered as a whole may all be rejected if part be inadmissible. *Burch*, 118/931, 45 S. E. 698.

Taken to jury-room; no error in allowing this, when; different rule as

to depositions. *Rudolph*, 16 A. 354, 85 S. E. 365.

Must be included in approved brief, or be attached to it and identified, to be considered. *Weathers*, 147/463, 94 S. E. 579; *Byrd*, 147/622, 95 S. E. 224.

Used to refresh memory of witness. *Weldon*, 21 A. 332, 94 S. E. 326. *Sizer*, 129/151, 58 S. E. 1055.

How brought to reviewing court. *Doctor Shoop's Laboratories*, 21 A. 623, 94 S. E. 822.

Not offered at proper time (during examination of witnesses). *Crawford*, 4 A. 800, 62 S. E. 501.

Admissible; order to submit affidavits before hearing not applied to. *Town of Adel*, 122/535, 50 S. E. 481.

Not excluded by charge. *Martin*, 136/228, 71 S. E. 133.

On interlocutory hearing, cannot be specified as record without being made part of approved brief. *Blackman*, 135/226, 69 S. E. 110.

Stenographic report of evidence on former trial was not documentary evidence; and refusal to allow jury to take it with them on retiring to consider the case was proper. *Golden Georgia Limited*, 113/982, 39 S. E. 476.

Order to produce, instant. *Rylee*, 7 A. 489, 67 S. E. 383.

Domicile of child, record of habeas-corpus proceeding admissible on issue as to. *Churchill*, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

Of guardian and ward, proof of, by authenticated exemplification from other State. *Sturtevant*, 133/565, 66 S. E. 890.

Duplicate, admissibility of. *Rogers-McRorie Co.*, 13 A. 495, 79 S. E. 374. Not secondary evidence. *Savannah Bank*, 6 A. 278, 65 S. E. 35. Duplicate writings connected without aid of parol testimony, requirements of statute of met by. *McFadden*, 22 A. 467, 96 S. E. 581.

Election managers' certificate, effect of, as evidence of right to take the office. Scales, 118/154, 44 S. E. 987.

Entries by agents or decedents, admissibility of. Turner, 123/5, 6, 50 S. E. 969, 107 Am. St. R. 76.

On note; no error in ruling that the note should go in evidence, when the entries alone were offered. Bell, 18 A. 318, 89 S. E. 349.

On minutes of benefit association, when not admissible to show false representations by member. Supreme Conclave, 107/97, 32 S. E. 946.

Of sale, on execution by sheriff, effect of. Pinkston, 106/105, 31 S. E. 808.

Equity of defendant as against legal title of plaintiff, notes and bond for title admitted to show. Martin, 102/72, 29 S. E. 132.

Erasure of objectionable matter, made by direction of court, in document before introduced in evidence; not presumed that jury tried to decipher it. Stiles, 113/700, 39 S. E. 295.

Estoppel by ratification, deed was not admissible to show, as against executory devisees. Murrelle, 142/41, 82 S. E. 456.

By ratification of signing lease, admissibility of testimony as to. Potts-Thompson Co., 135/452, 69 S. E. 734.

Record admissible on question of, though court had no jurisdiction of proceeding. Crumley, 141/603, 81 S. E. 871.

Execution of bond, what not sufficient as proof of. Provision as to deeds not applied. Equitable Mfg. Co., 130/67, 60 S. E. 262.

With formality required by law, assumed, where party admitted making it and nothing appeared to the contrary. Early County, 4 A. 268, 63 S. E. 353.

Of deed, proof of. Dyson, 130/573, 61 S. E. 468.

Admissibility of deed without proof of. Barnes, 136/164, 71 S. E. 129; Munroe, 145/215, 88 S. E. 947.

Deed admitted without proof of, no material error against party who ad-

mitted its execution. Ward-Truitt Co., 23 A. 673, 99 S. E. 153.

Of deed and power of attorney, testimony as to, made issue for jury, not court. Fullbright, 131/343, 62 S. E. 188.

Objection that it was not proved, overruled; what excepting party must show to reviewing court. Arnold, 4 A. 56, 60 S. E. 815; Southern Ry. Co., 9 A. 310, 71 S. E. 696; Aetna Ins. Co., 9 A. 759, 72 S. E. 300. Objection as to authority of writer was substantially an objection that execution was not shown. *Ib.*

Of note, proof of, not required of holder, in absence of plea of non est factum. Loyd, 144/91, 86 S. E. 233.

Of paper only incidental or collaterally involved need not be proved by subscribing witness. Prescott, 133/404, 65 S. E. 877.

Place of, presumed as in county named in caption of deed, contrary not appearing. Flint River Lumber Co., 134/632, 68 S. E. 436.

Preliminary proof of, not required, as to duly recorded conditional bill of sale. Charles, 4 A. 733, 62 S. E. 493.

Error in admitting letters without proof of. Burden, 147/412, 94 S. E. 232; Copeland, 147/601, 95 S. E. 13.

Of deed, how proved, where attesting witnesses fail. Howard, 104/231, 30 S. E. 802.

Of instrument sued on need not be proved, when no plea of non est factum is filed; denial in answer here insufficient. Anderson, 121/129, 48 S. E. 951, 2 Ann. Cas. 165; Torras, 108/345, 33 S. E. 989.

Proof of, not required, where not denied by plea. McMillan, 18 A. 445, 89 S. E. 635.

Where non est factum pleaded; prima facie proof sufficient to authorize introduction of the instrument. Jewell, 109/241, 34 S. E. 337.

Proof of, when comprehends authority to sign as well as genuineness of signature. Brown, 132/43, 63 S. E. 788.

Proved by maker's admission and other evidence without production of

attesting witness. *James*, 21 A. 170, 94 S. E. 85.

Proved by maker's testimony without production of attesting witness. *White*, 17 A. 551, 87 S. E. 831.

Proof of, may be circumstantial, if not otherwise prescribed. *Pacific Selling Co.*, 3 A. 143, 59 S. E. 468; *Fay*, 147/648, 95 S. E. 224.

Proof of, by subscribing witnesses, necessary except as code specifies. *Lamb*, 143/180, 84 S. E. 439.

Proof of; as to papers offered as constituting a will. *Shewmake*, 144/801, 817, 87 S. E. 1046.

Proof of, not required, before admitting bond in evidence, without plea of non est factum. *Prince*, 23 A. 57, 97 S. E. 457.

Proof dispensed with by admission in plea that mortgage was executed. *Faircloth*, 147/788, 95 S. E. 689.

Proof of, as to will offered for probate in solemn form. *Wells*, 140/119, 78 S. E. 823, 47 L. R. A. (N. S.) 722, Ann. Cas. 1914C, 898.

Proof of, by attesting witness, dispensed with where defendant admits execution of note sued on and assumes burden of proof. *Ford*, 131/443, 62 S. E. 526.

Proof of, by witness knowing handwriting of signature to unattested instrument. *McCray*, 134/416, 68 S. E. 62, 20 Ann. Cas. 101.

Proof of, necessary to admit application for insurance policy. *Brown*, 136/584, 71 S. E. 802. Letters. *Kent*, 136/858, 72 S. E. 413.

Proof of, not made by general assertion that this is the contract covering the transaction in question. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

Objection for want of proof of, not sustained. *Turner*, 141/29, 80 S. E. 461.

Proof of, required by plea denying genuineness and legality of indorsement. *Bruce*, 134/364, 67 S. E. 819.

Proof of. *Standback*, 106/81, 31 S. E. 805. How made. *Summerour*, 102/254, 29 S. E. 448.

Proof of, necessary, though defense calls in question validity of writings, without admitting or denying their existence. *Thornton*, 116/115, 42 S. E. 348.

Proof of, by attesting witness, when necessary, to admit note. *Summerour*, 102/254, 29 S. E. 448.

Proof of, wanting as to will, verdict for caveator resulted. *Peale*, 131/826, 63 S. E. 581.

Where person whose name appears thereon as subscribing witness denies or does not remember signing, other evidence received to prove. *Buchanan*, 105/393, 31 S. E. 105.

What admission not received in absence of subscribing witness. *Dunaway*, 142/383, 82 S. E. 1071.

When paper produced under notice was admissible without proof of. *L. & N. R. Co.*, 135/731, 70 S. E. 576.

Execution and entries, in claim or illegality case, need not be formally introduced; they are part of the pleadings. *Manley*, 128/351, 57 S. E. 705; *Miller*, 128/467, 57 S. E. 787.

Admissibility of. *Adams*, 11 A. 793. 76 S. E. 161.

Not excluded because two entries of levy appeared. *Young*, 133/700, 66 S. E. 925. Because clerk issued it against himself as administrator. *Thornton*, 133/825, 67 S. E. 97, 134 Am. St. R. 226.

Parol evidence to connect with judgment, when admissible. *Smith*, 107/803, 33 S. E. 684.

Sheriff's entry on, presumptively correct, and concludes plaintiff on subsequent levy. *Jinks*, 102/694, 28 S. E. 609.

When not excluded for failure to follow judgment technically in one respect. *Norton*, 148/652, 98 S. E. 76.

Defective, when excluded in claim case. *Osborne*, 107/282, 33 S. E. 54.

Admissibility of, in suit on forthcoming bond. *O'Neill Mfg. Co.*, 127/642, 56 S. E. 739. Execution or warrant not admissible, on issue made by counter-affidavit to foreclosure of

landlord's special lien. **Martin**, 127/705, 66 S. E. 995.

Executor suing in ejectment not required to make proof of will; but will not be irrelevant. **Deubler**, 139/773, 78 S. E. 176.

Appointment and qualification, proof of, by letters testamentary. **Deubler**, 139/773, 78 S. E. 176.

Deed of, not admissible as evidence of title, without proving his appointment as executor. **Bryan**, 143/70, 84 S. E. 120.

Return of two executors, verified by one only, allowed and recorded, when admissible. **Elwell**, 101/496, 28 S. E. 833.

Execution of power by one of three executors, invalid; not upheld by evidence that two of them took no part and he managed the estate alone. **Weeks**, 133/472, 66 S. E. 168, 134 Am. St. R. 213.

Deed of executors under will when not admissible when signed by only one of them. **Daugharty**, 134/60, 68 S. E. 472.

Exemplification as evidence; when not required. **Hilton**, 107/825, 33 S. E. 715.

From court of ordinary, of order to sell lands, admissible though order not signed by ordinary. **Smith**, 108/193, 33 S. E. 953.

Of letters of administration from another State, admissibility of. **Stewart**, 18 A. 519, 89 S. E. 1052.

Of city ordinance, what competent. **W. & A. R. Co.**, 104/12, 30 S. E. 424.

Of ordinances or other record of municipal corporation, not admitted unless certified under seal. **Central R. Co.**, 111/15, 36 S. E. 299.

Of record from another State, authentication of. **Conrad**, 123/242, 51 S. E. 299.

Of various court proceedings, when not rejected because verified by one certificate. **Weaver**, 138/101, 74 S. E. 835.

Exhibit attached to pleading should not be made part of brief of evidence,

except by reference. **Slappey**, 7 A. 796, 68 S. E. 308.

No reversal for excluding party's testimony to correctness of. **Bennett**, 148/66, 95 S. E. 690.

Of original papers attached to pleading, and relied on as evidence, practice as to. **Johnson**, 134/801, 68 S. E. 731.

Expert accountant's summarized statement as to what is shown by books of account, when admissible. **Cabaniss**, 8 A. 130, 68 S. E. 849.

Extract from minutes of superior court, duly certified by clerk, proper mode of proving conviction and sentence. **Anglin**, 14 A. 566, 81 S. E. 804. **Whether admissible without seal of clerk.** **Kinney**, 14 A. 182, 183, 80 S. E. 663.

Foreign exemplification of letters of administration, admissibility of. **Stewart**, 18 A. 519, 89 S. E. 1052.

Foreign law, proof of. **Thomas**, 125/77, 54 S. E. 77, 6 L. R. A. (N. S.) 658.

Court in extradition case not restricted to formal proof of; may consult published decisions, etc. **Barranger**, 103/466, 30 S. E. 524.

Foreign records, how authenticated. **Taylor**, 118/874, 45 S. E. 672.

Foreign will, with two witnesses, when probated here, and effect of. **Knight**, 104/309, 30 S. E. 794.

Forgery, after finding of, evidence as to execution of deed not relevant on issue of estoppel. **Roberts**, 101/765, 29 S. E. 271.

Ancient deed may be found as, from its face and entries, without aliunde evidence. **Daugharty**, 134/651, 68 S. E. 472.

Contention of, as to release pleaded: burden of proof; affidavit of forgery not required. **Martin**, 130/79, 60 S. E. 253.

Evidence demanded finding that deed was. **Gorham**, 137/134, 72 S. E. 893.

Of deed, evidence sufficient on trial of special issue as to. **Stegall**, 147/447, 94 S. E. 541. **Not sufficient.** **James**, 147/598, 95 S. E. 11. **Recital**

in other deed not admissible. **James**, 147/598, 95 S. E. 11.

Instrument here admissible on trial for. **Womble**, 107/666, 33 S. E. 630. Forged check admissible, though ostensible maker's name misspelled. **Hale**, 120/183, 47 S. E. 531.

Judge can not assume that deed is, from circumstantial evidence, opinions of witnesses, comparison of handwriting, etc. **Crummey**, 114/746, 40 S. E. 765.

Mode of attacking deed as; burden of proof. **Leverett**, 6 A. 91, 64 S. E. 317.

Of deed, evidence necessary on issue of. **Strickland**, 142/120, 82 S. E. 531.

Of deed; admissibility of original plea in other suit, with verification signed by plaintiff. **Stewart**, 143/22, 84 S. E. 63.

Of deed, evidence on issue of, insufficient to show existence and genuineness. **Chatman**, 127/360, 56 S. E. 439.

Of deed, testimony incompetent on issue of, as to price asked for land generally. **Williams**, 142/126, 82 S. E. 522.

Of deed, though ancient, affidavit of, puts burden of proving its execution on party offering it. **McCall**, 114/752, 40 S. E. 768.

Of deed, trial of special issue as to. Admissibility and insufficiency of evidence. **Webb**, 134/388, 67 S. E. 1034; **Flint River Lumber Co.**, 134/627, 68 S. E. 436.

Of deed, when sufficiently shown by certificate of executive department. **Durham Coal Co.**, 142/725, 727, 83 S. E. 683.

Of title, when shown without plea of non est factum. **Citizens Bank**, 10 A. 703, 74 S. E. 303.

Of will, admissibility of testimony on issue as to. **Ginn**, 142/420, 83 S. E. 118.

Proof of genuineness by comparison. **Paulk**, 8 A. 738, 70 S. E. 145.

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Reputation as forger, when admissible in support of plea of non est factum. **McClure**, 6 A. 303, 65 S. E. 33. Former testimony, from brief of evidence, offered in part, admitted without other part. **Denson**, 111/809, 35 S. E. 680.

Of inaccessible witness, proof as to, admitted in civil case; witness residing in another State considered inaccessible. **Swift**, 8 A. 542, 70 S. E. 97. Living party to the case is not inaccessible. **Crumm**, 11 A. 205, 75 S. E. 108.

In agreed brief of evidence, when witness not bound by; not admitted to impeach him, unless foundation laid. **Owen**, 111/885, 36 S. E. 969.

Of absent witness, admissibility; sufficiency of showing as to inaccessibility. **Cohen**, 14 A. 170, 80 S. E. 679.

Not received, his inaccessibility (in other county) not appearing. **Savannah Bank**, 142/447, 83 S. E. 137.

Of deceased or inaccessible witness; when admissible, and how proved. **Smith**, 147/689, 95 S. E. 281; **Freeman**, 147/700, 95 S. E. 236; **Hunter**, 147/823, 95 S. E. 668; **Ga. &c. Ry. Co.**, 142/191, 82 S. E. 548; **Brown**, 142/396, 83 S. E. 98; **Banks**, 140/640, 79 S. E. 572.

Of deceased, disqualified, or inaccessible witness, law as to. **Fender**, 131/440, 62 S. E. 527.

What sufficient, showing as to inaccessibility. **Robinson**, 128/255, 57 S. E. 315.

Of party does not "estop" from testifying to the contrary. **Phoenix Ins. Co.**, 113/424, 38 S. E. 992.

Proof of, by stenographer. **Jones**, 128/23, 57 S. E. 313.

When admitted where the witness is out of the State. **Owen**, 111/885, 36 S. E. 969.

Former trial, admissibility of brief of testimony on. **Mays**, 134/870, 68 S. E. 738.

Evidence on, how available. **Barksdale**, 120/388, 47 S. E. 943.

Former Trial—Continued).

Proof of statement of accused on. **McDuffie**, 17 A. 343, 86 S. E. 821.

Testimony from brief of evidence on, admissibility of. **Burch**, 125/158, 53 S. E. 1008.

Testimony given on, admissible without preliminary proof of death, inaccessibility, etc. **Williams**, 3 A. 737, 60 S. E. 357.

What deceased witness testified on, not admissible on trial of different issue. **Whitaker**, 110/857, 36 S. E. 231.

Fraudulent representations of ownership, on issue as to, claim affidavits and bonds filed by third persons are not admissible. **Kinard**, 1 A. 146, 58 S. E. 263.

Fraudulent title, deed admissible on issue of. **Livingston**, 132/6, 63 S. E. 694.

Grant and plat from State, when no error in excluding. **Wallace**, 136/845, 72 S. E. 157. Without seal, when admissible. **Reppard**, 103/198, 29 S. E. 817. Admissibility of fragments of paper and wax. **Mitchell**, 134/383, 67 S. E. 1042. When admissible without accompanying proof. **Stanford**, 122/404, 50 S. E. 161.

Guardian's return prima facie evidence against him and surety; how overcome; and when sufficient to show devastavit. **U. S. Fidelity Co.**, 2 A. 525, 58 S. E. 777.

Handwriting, proof of. **Bates**, 18 A. 718, 724, 90 S. E. 481.

Proof of, by comparison, **Vizard**, 119/924, 47 S. E. 348; **Wilson**, 10 A. 99, 72 S. E. 943; **Moultrie Co.**, 120/730, 734, 48 S. E. 143; **Gross Co.**, 120/751, 755, 48 S. E. 115. Comparison of, on plea of non est factum; necessity for proof or acknowledgment of signature. **Chicago Building &c. Co.**, 139/816, 78 S. E. 244. Counsel not allowed to show to jury, in argument, signatures of accused to pleas in abatement and to letter. **Washington**, 124/424, 52 S. E. 910. Necessity to proffer writings to other party before he announces ready. **Ginn**, 142/420, 83 S. E. 118; **Axson**, 103/578, 30

S. E. 262. Law as to previous submission of papers to opposing party, when not applicable. **Stewart**, 143/22, 84 S. E. 63. Paper other than that sued on admissible for. **Kelly**, 102/700, 29 S. E. 591.

Exception to rule excluding; proof of pedigree by statements of deceased relatives. **Terry**, 142/226, 82 S. E. 566.

Of attesting witnesses to deed, admissibility of proof. **Strickland**, 142/120, 122, 82 S. E. 531.

Of deceased witness, proof of, admissible. **Bowen**, 136/860, 72 S. E. 340.

Of subscribing witnesses to will, admissibility of proof of. **Wells**, 140/119, 78 S. E. 823, 47 L. R. A. (N. S.) 722, Ann. Cas. 1914C, 898.

Proof of, by one testifying from acquaintance with similar writing purporting to be by one he had not seen write. **Shaw**, 9 A. 460, 463, 71 S. E. 745.

Genuineness of writing offered as standard of comparison, not shown by circumstances here. **McCombs**, 109/496, 34 S. E. 1021.

Proof of, resisted by testimony of statements of deceased attesting witness. **Mobley**, 134/125, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1004.

Proof of, to show genuineness of signature to unattested instrument. **McCray**, 134/416, 68 S. E. 62, 20 Ann. Cas. 101.

Headright application and caveat, what admitted on trial of. **Pritchett**, 102/20, 29 S. E. 210.

Evidence insufficient to show land not previously granted. **Roberts**, 136/473, 71 S. E. 786.

History of transaction involved, note admissible as part of, not irrelevant. **Sellers**, 127/634, 56 S. E. 1011.

Homestead and exemption schedule, and amendment thereto, admissible. **Redding**, 112/493, 37 S. E. 711.

Application showing title in wife, evidence admissible to show that she afterward conveyed to husband and

amended her application. **Ach**, 118/105, 44 S. E. 870.

Papers admissible, though variance in surveyor's affidavit from his plat. **Baldwin Co.**, 101/387, 29 S. E. 18.

Papers, original primary, record secondary. **Pritchett**, 101/236, 28 S. E. 666.

Proceedings not naming beneficiaries, not admitted. **Central Ry. Co.**, 12 A. 370, 376, 77 S. E. 193.

Record of, showing invalidity on face, excluded. **Peterson**, 135/103, 68 S. E. 1022; **King**, 143/385, 85 S. E. 95.

Schedule approved, prima facie evidence that property therein described is exempt, if less than \$1,600. Not so as to any not named in petition. **Blackstone**, 120/79, 80, 47 S. E. 585.

Witness allowed to testify that he applied for, and that certain property was the same property mentioned in the homestead papers. **McLamb**, 4 A. 553, 62 S. E. 107.

Husband, receipt of, to administrator for wife's share of estate, before act of 1866, admissible. **Copeland**, 147/602, 95 S. E. 13.

Deed to, from wife, when admissible over objection as showing sale without order of court. **Shackelford**, 135/30, 68 S. E. 838.

Deed from, to wife, admissible over objection of his heirs that court order did not authorize it. **Munroe**, 145/216, 88 S. E. 947.

Deed from, to wife; admissibility of evidence on issue of fraud on creditors. **Kirkman**, 145/452, 89 S. E. 411; **Warren**, 145/503, 89 S. E. 520; **Gaskins**, 145/806, 89 S. E. 1080; **Lane**, 145/810, 89 S. E. 1083.

Deed to married woman in 1848 did not show title in her, without evidence that husband's right did not attach. **Causey**, 143/7, 84 S. E. 58.

Identification of books of a corporation, when sufficient. **Lowry Bank**, 122/490, 50 S. E. 396.

Of document by testimony as to contents. **Cabaniss**, 8 A. 130, 68 S. E. 849; **Sasser**, 9 A. 178, 70 S. E. 930.

Identity, what record evidence admitted on issue of; and what not admissible. **Folks**, 135/179, 69 S. E. 24.

Impeaching, tax digests were not relevant as. **Gilmer**, 146/722, 92 S. E. 67.

Improper mode of obtaining document, not render it inadmissible. **Cabaniss**, 8 A. 146, 68 S. E. 849.

Inaccessible writing, duly approved copy of, properly admitted. **Shedden**, 110/461, 35 S. E. 707.

Incorporation, effect of certificate as evidence. **Cason**, 16 A. 821, 827, 86 S. E. 644.

Indictment in other case, when not admissible. **Weldon**, 21 A. 332, 94 S. E. 326.

Of accused for prior similar offense, and his plea of guilty thereon, not admissible against him. **McCain**, 2 A. 391, 58 S. E. 550.

Inquest, evidence received on, though required to be taken down and written, may be proved orally. **Green**, 124/343, 52 S. E. 431.

Insanity. Testamentary paper as evidence of mental capacity. **Watkins**, 23 A. 183, 98 S. E. 94.

Insolvency. Execution with entry of nulla bona, admissible to prove. **Virginia-Carolina Chemical Co.**, 23 A. 634, 99 S. E. 154.

Nulla bona entry on execution not the only method of proving. **Harrell**, 112/711, 38 S. E. 56.

Admissibility of bankruptcy proceeding, as tending to show bankrupt's condition several months before petition in bankruptcy was filed. **Lyle**, 20 A. 380, 93 S. E. 20.

Of defendant being material, execution against him was admissible. **Manning**, 136/881, 72 S. E. 401.

Tax returns admissible on question of; and how proved. **McMillan**, 133/761, 66 S. E. 943.

Insurance application or by-laws must be attached to policy, to be received in evidence. **Johnson**, 134/800, 68 S. E. 731. Book of rates, admissibility of. Fraud and misrepresentation, proof of. *Ib.*

Insurance—(Continued).

Association's by-law not admissible in suit on policy that shows no by-laws. *Puryear*, 137/579, 73 S. E. 851.

Policies, what admissible, and what not, on trial for murder, as tending to show motive. *Walker*, 137/399, 73 S. E. 368.

Policy, admissibility of application for, and of constitution and laws of fraternal society. *Fraternal Asso.*, 140/284, 78 S. E. 915.

Policy sued on; admissibility of proofs of death, etc., not in compliance with forms. *Met. Ins. Co.*, 134/165, 67 S. E. 393.

Interlineation, as affecting admissibility. *Fraternal Relief Asso.*, 9 A. 44, 54, 70 S. E. 265.

Inventory made by several, not admitted in connection with testimony of one, unless he can verify the whole from his knowledge. *Whitley Grocery Co.*, 115/918, 42 S. E. 282.

Of administrator, how far evidence against him. *Wood*, 121/471, 49 S. E. 295.

Invoice, effect of, as evidence of sale. *Furst*, 117/474, 43 S. E. 728.

Of shipper, admissibility of, against carrier sued for shortage in goods. *Central Ry. Co.*, 8 A. 18, 68 S. E. 492.

Judgment against but one of three partners sued, admissible. *Little Rock Co.*, 112/521, 37 S. E. 743.

Against one who conveyed land before he was sued, not admissible against grantee. *Elwell*, 101/496, 28 S. E. 833.

Applied to subject-matter by evidence. *Stringfellow*, 112/494, 37 S. E. 767.

Conclusive on party vouched into court, as to amount, and as to right of plaintiff. *Charleston Ry. Co.*, 139/20, 76 S. E. 360.

De bonis testatoris, conclusive that administrator who did not defend had assets of the estate. *Lane*, 141/501, 81 S. E. 128.

Foreign, how proved. *Clein*, 17 A. 652, 87 S. E. 1101.

General on face, shown to be void

for want of notice to defendant in attachment. *Richards*, 138/695, 76 S. E. 64.

How proved. *Anglin*, 14 A. 566, 81 S. E. 804.

Inconclusive as to third persons not parties; as on inquisition of lunacy. *Slaughter*, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

In dispossessory-warrant case, not admitted on issue as to title. *Jordan*, 103/483, 30 S. E. 265.

In favor of "heirs general," and deed naming them, admissibility of certified copies, without proof of relationship of plaintiffs claiming under. *Vaughn*, 113/103, 38 S. E. 310.

May be attacked for want of jurisdiction, though not objected to when offered in evidence. *Hood*, 130/617, 61 S. E. 471, 19 L. R. A. (N. S.) 193.

Not appearing of record, how established; not proved collaterally by parol testimony. *Wood*, 145/256, 88 S. E. 980.

Of inferior judicatory must on its face show jurisdictional facts. Order of referee in bankruptcy proceedings not evidence of facts therein recited. *Woodward*, 116/751, 42 S. E. 1030.

Of insanity, cumulative of other competent evidence on the subject. *Am. Trust & Bkg. Co.*, 102/206, 29 S. E. 182.

Of justice's court may be proved by introducing either original entry on docket or certified copy. *Harrell*, 21 A. 525, 94 S. E. 830.

Of nonsuit, when must be supplemented by the evidence that the court rendering it passed on. *Burns*, 132/349, 64 S. E. 113.

Of other State, not proved by certificate of clerk of the court, unaccompanied by copy of the judgment. *Youmans*, 122/331, 50 S. E. 141.

Of sister State, what necessary to authenticate. *Sloan*, 110/70, 35 S. E. 344.

Offered as an estoppel, not admissible without complete and duly authenticated copy of record. *Williams*, 118/296, 45 S. E. 282.

Proof of, with and without the whole record; introductory order admitted without. *Ocean S. Co.*, 107/223, 33 S. E. 179.

Order of county commissioners, establishing road, when admissible without record of the proceedings. *Savannah R. Co.*, 118/746, 45 S. E. 623.

Proved by introducing *fi. fa.*, on trial of plea of exemption from garnishment. *Travis*, 120/908, 48 S. E. 356.

Quando acciderint, conclusive as to what. *Hollis*, 103/78, 29 S. E. 482. When not evidence of devastavit. *Richardson*, 103/741, 30 S. E. 573.

Rule as to admissibility of entry, to show existence and contents; of entire record, to show estoppel or to establish particular state of facts. *Weaver*, 138/101, 74 S. E. 835.

Void for want of service, when provable by testimony. *Weaver*, 3 A. 726, 60 S. E. 367.

When admissible without transcript of whole record. *Stringfellow*, 112/494, 37 S. E. 767; *Little Rock Co.*, 112/526, 37 S. E. 743; *Vaughan*, 113/103, 38 S. E. 310.

When looked to, without formal tender in. *Morrison*, 126/115, 54 S. E. 938.

Setting part year's support, not collaterally attacked by objecting to its admission. *Sexton*, 146/685, 92 S. E. 217. Judgments and decrees, in general, bind only parties and privies. *Wardlaw*, 106/33, 31 S. E. 785.

See Judgments.

Jurisdiction, record admissible to show want of. *Ansley*, 120/618, 48 S. E. 228; *Ocean S. Co.*, 107/220, 33 S. E. 179.

Label, as evidence of contents of package. *Cassidy*, 10 A. 123, 72 S. E. 939; *Daniel*, 11 A. 800, 76 S. E. 162; *Pitts*, 15 A. 436, 83 S. E. 673; *Ayash*, 21 A. 264, 94 S. E. 282.

Land lines, admissibility of protest to processer's return as to, on question of location. *Hunter*, 7 A. 668, 67 S. E. 894.

Pointed out before bond for title

executed, when not admissible without reforming bond. *Weaver*, 114/165, 39 S. E. 874.

Grant not including land in controversy, admissible to illustrate disputed boundary line. *Morris*, 145/562, 89 S. E. 704.

Lease contract under seal, by agent having only parol authority, when admissible. *Hayes*, 1 A. 26, 57 S. E. 1087.

In name of corporation, admissible in connection with evidence to show knowledge and receipt of rent. *Potts-Thompson Co.*, 135/452, 69 S. E. 734.

Of railroad, admissibility of. Evidence sufficient as to land being connected with or appertaining to or owned by the lessor. *Turner*, 141/28, 80 S. E. 461.

Ledger, when admissible as "book of original entries." *Harper*, 13 A. 238, 79 S. E. 44.

Legal process, *fi. fa.*, on foreclosure of absolute bill of sale, based on affidavit not showing that bill was given to secure debt, is not. *Searcy*, 114/270, 40 S. E. 235.

Legislative action, compliance with constitutional requirements preliminary to passage of bill, admissibility of evidence as to. *Cutcher*, 105/180, 31 S. E. 139.

Legislative journals, or other records not received to show that enrolled and authenticated act was not constitutionally passed. *Atlantic R. Co.*, 135/545, 69 S. E. 725, 32 L. R. A. (N. S.) 20.

Use and weight of, discussed. Laws not invalidated by omission of entries thereon. *DeLoach*, 134/740, 68 S. E. 708, 20 Ann. Cas. 342; *Whitley*, 134/759, 68 S. E. 716.

Lesser right shown by instrument than alleged, not excluded. *Hayes*, 1 A. 30, 57 S. E. 1087.

Letter and statement of account from plaintiff to defendant, two years after sale, not admissible. *Butler*, 138/748, 75 S. E. 1127. Letter and telegram admissible over objection, in circumstances stated. *Becker*, 138/634, 75 S. E. 1122.

Letter—(Continued).

Admissibility of. *Gallaher*, 22 A. 640, 97 S. E. 97.

Admissibility of copy of. *Frost*, 10 A. 96, 72 S. E. 719. Sufficiency of evidence as to genuineness. *National Produce Co.*, 10 A. 338, 73 S. E. 606.

Admissible as evidence without being allowed to go into pleading. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

Anonymous, admissibility of. *Covington*, 15 A. 513, 83 S. E. 867.

As admission, not received without proof of its authorship. *Brooke*, 122/358, 50 S. E. 146. Secondary evidence of contents not received, if not shown lost. *Franklin*, 122/605, 50 S. E. 342. Corporation, when bound by contract in letter signed by general manager. *Raleigh R. Co.*, 122/700, 50 S. E. 1008.

As notice, must be shown to have been duly addressed, duly stamped, and mailed. *Bankers Co.*, 127/326, 56 S. E. 429; *Bush*, 127/309, 56 S. E. 430, 9 Ann. Cas. 240. No error in rejecting. *Cranksbaw*, 1 A. 364, 58 S. E. 222.

Attached to affidavit, admissible. *McMillan*, 133/761, 66 S. E. 943.

By accused properly admitted. *Arnold*, 15 A. 347, 83 S. E. 155.

Demanding delivery of goods, when admissible. *Fitzgerald Cotton Oil Co.*, 3 A. 212, 59 S. E. 713.

Destroyed, fact of its writing, and relevancy of contents; must appear, to admit secondary evidence. *Ginn*, 142/421, 83 S. E. 118.

Carbon copy not admitted as duplicate original. *Ward-Truitt Co.*, 23 A. 672, 99 S. E. 153.

Presumption of receipt, where properly directed, stamped, and mailed. *Lowenstein*, 23 A. 261, 98 S. E. 111.

Envelope addressed to whisky dealer, admissibility of, in prosecution for violation of prohibition law. *Kerney*, 21 A. 500, 94 S. E. 625.

From one to another of former counsel, both deceased, was not admissible. *Carrie*, 145/184, 88 S. E. 949.

Letter—(Continued).

Inadmissible to bind third person, where not shown to have been authorized by him. *Sweeney*, 119/81, 46 S. E. 76, 100 Am. St. R. 159.

In possession of addressee, presumed to have been received by him from writer. *Austin*, 1 A. 258, 57 S. E. 964.

Must appear to have been delivered, or properly addressed, duly stamped, and mailed. *National Asso.*, 120/358, 47 S. E. 962.

Not admissible for comparison of writing, where not submitted to adverse party before trial. *Walters*, 137/475, 73 S. E. 653.

Not admissible to show demand, which referred to a demand as previously made. *Hightower*, 126/8, 54 S. E. 939, 7 Ann. Cas. 927.

Not admissible, where writing denied, without proof of genuineness of signature. *Walters*, 137/475, 73 S. E. 653; *Kent*, 136/858, 72 S. E. 413.

Not admissible without proof of genuineness; proof that it was received in the regular course of business, not sufficient. *Lumpkin*, 15 A. 816, 84 S. E. 216.

Not proved genuine, not admissible as part of defendant's statement to jury in criminal case; but he may state its contents. *Gaston*, 9 A. 824, 72 S. E. 285. Reading, as part of prisoner's statement, not allowed. *Nero*, 126/555, 55 S. E. 404.

Objected to as a whole, no error in admitting, where part was admissible. *Consolidated Phosphate Co.*, 20 A. 47, 793 S. E. 155.

Of buyer to seller in regard to other transaction, irrelevant. *Mendel*, 134/610, 68 S. E. 430.

Of insured to agent of insurers, and answer, admissibility of. *Commercial Assurance Co.*, 130/191, 60 S. E. 554.

Of insurer's agent, admissibility of. *Torbert*, 141/773, 82 S. E. 134.

Of plaintiff's attorney, written before suit, admissible to show he assumed inconsistent position. *Morris*, 106/461, 32 S. E. 595.

Partnership not shown by. **Ruff**, 145/83, 88 S. E. 545. Letter-heads as evidence of partnership. **National Pencil Co.**, 19 A. 431, 91 S. E. 432.

Proof of receipt of, by mail. **Swafford**, 7 A. 348, 66 S. E. 1022.

Received, testimony of, excluded. **Gorham**, 137/134, 72 S. E. 893.

When admissible to prove acquiescence in collateral agreement by agent of writer. **Howell**, 127/574, 56 S. E. 771.

Whether admissible on testimony of third person as to, here. **Woodruff**, 21 A. 666, 94 S. E. 809.

With "general agent" after signer's name, and with name of company in printed heading, not admissible against company, when. **Michigan Mutual Ins. Co.**, 10 A. 697, 73 S. E. 1096.

Written after settlement, receivable as admission that it was with writer's approval. **Clark**, 141/612, 81 S. E. 870.

Letters as evidence of contract. **Bailey**, 1 A. 398, 58 S. E. 120.

Between manufacturer and its agent (plaintiff), not disclosed to buyer (defendant) before contract of purchase, not admissible. **Aripeka Saw Mills**, 143/210, 84 S. E. 455.

Harmless error in admitting, without sufficient proof of execution. **Nat. Produce Co.**, 10 A. 338, 73 S. E. 606.

Between party offering them and his agent, held inadmissible, because self-serving declarations. **McNamara**, 10 A. 669, 73 S. E. 1092.

Single exception to admission of, not sustained where some of them admissible. **Fricker**, 124/166, 52 S. E. 65.

Written by accused, admissibility of **Powers**, 138/624, 75 S. E. 651. By accused to witness, evidence as to contents of, to show relations existing between them. **Roark**, 105/739, 32 S. E. 125.

Concealment of a part not admitted should be requested. **American Cotton College**, 138/148, 74 S. E. 1084.

Connected with contract, admissibility of. **Hollister**, 9 A. 176, 70 S. E.

970. Circumstances tending to show genuineness of. **lb.** Parol proof of contents of, when admissible. **Johnson County Bank**, 9 A. 466, 71 S. E. 757.

Consent not implied from failure to answer. **Elberton Co.**, 122/858, 50 S. E. 964.

Cut, admissibility of remaining parts. **Greer**, 138/664, 75 S. E. 1050.

Not received without proof of execution. **Burden**, 147/412, 94 S. E. 232; **Copeland**, 147/601, 95 S. E. 13.

Exception to admission of, must show them or their contents in substance. **Stewart**, 138/797, 76 S. E. 352.

From caveators to nominated executor, when excluded on issue of testamentary capacity, etc. **Credille**, 131/43, 61 S. E. 1042.

In part relevant, objection to whole batch not sustainable. **Dolvin**, 131/300, 62 S. E. 198.

Not admissible without proof of genuineness. **Allen**, 129/748, 59 S. E. 813.

Of party to third person, not admissible, here. **Interstate Chemical Corp.**, 20 A. 776, 93 S. E. 422.

On proof of handwriting. **Wilcox**, 3 A. 740, 60 S. E. 357.

Relevant to issue, admissible. **Brock**, 132/19, 63 S. E. 794.

Signed by individuals, held inadmissible, without further evidence, to bind corporation. **Georgia Steel Co.**, 136/492, 71 S. E. 890.

To contractor after machinery installed, when immaterial. **Gulfport Co.**, 135/198, 69 S. E. 160.

Written by one of joint defendants with approval of the other, held admissible. **Peyton**, 145/179, 88 S. E. 937.

Written in trade name of alleged partnership, admissibility of. **Walls**, 141/594, 81 S. E. 866.

Admissibility and purpose of. **Walker**, 137/398, 73 S. E. 368.

Letters and letter-heads admissible on issue of partnership. **American Cotton College**, 138/147, 74 S. E. 1084.

Letters testamentary from other State, admissibility of. *Heatley*, 135/154, 68 S. E. 783.

Levy of mortgage *fi. fa.*, entry of, not excluded for omission of recital of defendant's interest. *Thornton*, 133/825, 67 S. E. 97, 134 Am. St. R. 226.

Recital in entry, that defendant is in possession, *prima facie* true. *Burt*, 113/1144, 39 S. E. 409.

On personal property manifested by seizure, not by the official entry. *Ayers*, 3 A. 306, 59 S. E. 924.

License (U. S.) for sale of liquor, effect of, as evidence of violation of State liquor law. *Allen*, 11 A. 245, 75 S. E. 11; *Daniel*, 11 A. 800, 76 S. E. 162; *Bragg*, 15 A. 627, 84 S. E. 82; *Heimer*, 16 A. 589, 85 S. E. 821; *Christian*, 9 A. 61, 70 S. E. 258; *Cassidy*, 10 A. 123, 72 S. E. 939; *Jackson*, 10 A. 143, 72 S. E. 941; *Haar*, 14 A. 548, 81 S. E. 811. Original special-tax receipt admissible. *Ib.*

To build wharf, issued by secretary of war, when not admissible to show title. *Wallace*, 136/845, 72 S. E. 157.

Life-expectancy tables, as evidence. *Standard Oil Co.*, 15 A. 572, 84 S. E. 69; *Southern Cotton Oil Co.*, 125/372, 54 S. E. 110; *Atlantic Ry. Co.*, 125/456, 54 S. E. 622. Error in excluding, no cause for reversal. *McBride*, 125/515, 54 S. E. 67.

Admissible without proof of correctness, when. *W. & A. R. Co.*, 115/715, 42 S. E. 74.

Not essential part of evidence to arrive at value of life. *A. C. L. R. Co.*, 8 A. 186, 195, 68 S. E. 875; *Merchants & Min. Trans. Co.*, 4 A. 65, 62 S. E. 130; *Dalton Excelsior Co.*, 19 A. 336, 91 S. E. 440.

Not competent, without evidence of value of services or of earning capacity. *Atlanta R. Co.*, 122/83, 49 S. E. 818. Testimony sufficient as basis of calculation as to life-expectancy, and as to damages, without introduction of mortality and annuity table. *Southern Ry. Co.*, 7 A. 659, 67 S. E. 886.

Proper mode of charging jury as to.

Southern Ry. Co., 119/148, 151, 45 S. E. 1000.

Lost note, may be sued on, without having first established a copy; and, if non est factum is pleaded, proof as to the original may be made on the trial. *Continental Fertilizer Co.*, 7 A. 721, 67 S. E. 1052.

Lost office paper, right to introduce evidence to support traverse of motion to establish copy. *Beall*, 146/233, 91 S. E. 71.

Mail, notice by; how proved. *Lewis*, 18 A. 181, 89 S. E. 177.

Effect of registry receipt as evidence. *Swafford*, 7 A. 348, 66 S. E. 1022. Proof of service by. *Ib.*

Map of city, admissibility of. *Murphy*, 135/194, 69 S. E. 117.

Of county, when received to identify land in dispute. Entries and notations on it excluded. *Copeland*, 147/602, 35 S. E. 13.

Of county, not shown to be correct, excluded. *Hall*, 22 A. 113, 95 S. E. 936.

Of county, properly certified as copy of map in secretary of State's office, admitted without proof of correctness of original. *Berry*, 117/964, 44 S. E. 824.

Of lands delivered to agent employed to protect them, admissible on issue of his authority. *Brookman*, 148/722, 98 S. E. 543.

Of land subdivision, on which lots are sold, how binding on original owner and grantees. *Hurt*, 138/380, 75 S. E. 418.

Of subdivision of land, purporting to be over thirty years, old, what necessary to admit. *Bower*, 126/35, 54 S. E. 918.

Of land sued for, proved to be correct, admissible for what purpose. *Napier*, 137/243, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013.

Of public roads of a county, admissibility and relevancy of. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173.

Of streets, admissibility of. **Georgia R. Co.**, 134/871, 68 S. E. 703.

Of survey of land in dispute, admissible if proved correct, though witness be other than the surveyor. **Bunger**, 142/449, 83 S. E. 200, Cas. 1916C, 173.

Proof as to identification and execution of, was sufficient to authorize its introduction. **Acme Brewing Co.**, 115/495, 42 S. E. 8.

Refreshing memory of witness by. **Smith**, 22 A. 511.

Marriage, certified copy of license and marriage certificate, not conclusive evidence; not better than testimony of witnesses. **Norman**, 121/456, 49 S. E. 268.

License and certificate admissible in contest for money from insurance on life of husband. **Meldrim**, 140/400, 78 S. E. 1089.

License; copy certified by ordinary, not admissible when it is not shown that he had no clerk. **Smallwood**, 129/50, 58 S. E. 640.

Meaning of language used in document, the writer not allowed to testify as to, when. **Willingham**, 113/953, 39 S. E. 314.

Memorandum unsigned, not "documentary evidence," to be sent out with jury, when. **Walker**, 103/574, 30 S. E. 294.

Used in connection with testimony concerning size and number of pieces of lumber. **Ga. &c. Ry. Co.**, 133/136, 65 S. E. 381.

How used by witness in testifying. **Lenney**, 118/427, 45 S. E. 317; **Proctor & Gamble Co.**, 128/606, 57 S. E. 879.

Made and delivered to party by one not shown to have been authorized so to do by opposite party, not admitted. **First State Bank**, 111/877, 36 S. E. 960.

Not necessary that the witness should have made it. **Georgia Excelsior Co.**, 12 A. 797, 78 S. E. 611.

Of oral agreement to extend time, in presence of other party, admissible. **Athens Mfg. Co.**, 134/600, 68 S. E. 329.

Of values, admissibility of, in suit for price of articles sold. **Myers**, 14 A. 520, 81 S. E. 595.

Of witness, not admissible as evidence, but may be used to refresh his recollection. **Ingram**, 108/194, 33 S. E. 961; **Weldon**, 21 A. 332, 94 S. E. 326; **A. C. L. R. Co.**, 12 A. 392, 77 S. E. 316; **Smith**, 22 A. 511, 96 S. E. 334; **Rogers-McRorie Co.**, 13 A. 495, 79 S. E. 374; **Georgia Excelsior Co.**, 12 A. 797, 78 S. E. 611.

Testimony based on, when competent, and when not. **Akins**, 111/815, 35 S. E. 671.

Unsigned, of agreement, admissibility of parol proof to affect terms of. **Goldsmith**, 7 A. 849, 68 S. E. 462.

What necessary to admit, as original testimony. **Phenix Co.**, 112/765, 38 S. E. 67; **Whitley Grocery Co.**, 115/920, 42 S. E. 282.

When witness may use, in testifying. **Shrouder**, 121/615, 49 S. E. 702; **Sixer**, 129/151, 58 S. E. 1055.

Made by others, witness without independent knowledge cannot testify to matters derived from. **Kent**, 144/7, 85 S. E. 1017.

Memory of witness refreshed from book. **Johnson**, 125/243, 54 S. E. 184.

Mercantile agency reports not admissible to prove value of property. Competency to show notice, lack of notice, or motive, not apparent. **Brown**, 144/303, 87 S. E. 295.

Minutes of corporation, as evidence. **Fields**, 20 A. 102, 92 S. E. 653; **Great Southern Accident Co.**, 13 A. 288, 79 S. E. 162. Transcript from, when admissible. **Maynard**, 112/443, 37 S. E. 741. Proof of authenticity. **Bridges**, 15 A. 291, 82 S. E. 925; **Fraternal Relief Asso.**, 9 A. 44, 53, 70 S. E. 265. Material interlineation unexplained, minutes excluded. **Id.**

Part of, may be introduced. Other party may introduce the other part, if desired. **Fouche**, 110/827, 36 S. E. 256. Show formal actions. **Caudell**, 140/713, 79 S. E. 776.

Of court, admissibility of original, instead of certified copy. **Almand**, 17 A. 519, 87 S. E. 716. Silent as to appointment of notary, presumption that no such appointment was made. **Perry**, 16 A. 545, 85 S. E. 821. Original minutes of superior court, not admissible in city court. **Traylor**, 11 A. 497, 75 S. E. 828.

Of municipal corporation, as evidence. **Moore**, 17 A. 285, 286, 86 S. E. 641. When action of city council must be shown by. **Farrar Lumber Co.**, 20 A. 140, 92 S. E. 946. Of town council, identified by clerk as legal custodian. Admissible though defendants were not parties to the application passed on. **Stanley**, 135/712, 70 S. E. 577.

Proof of assignment by county commissioners when not entered on. **Brown**, 20 A. 118, 121, 92 S. E. 774.

Silent as to fact which should be entered thereon, irregularity cured by parol testimony, when. **Chelsey**, 121/344, 49 S. E. 258.

Mistaken recital in will, though not invalidating it, how considered. **Penn**, 144/67, 86 S. E. 233.

Mortgage admissible to show admission that a note secured by it was unpaid on the date of the mortgage. **Campbell**, 20 A. 88, 92 S. E. 545.

Effect of record of, as evidence. **Cammon**, 20 A. 175, 92 S. E. 957.

Not excluded for irregularities touching filing for record. **Albany Bank**, 137/776, 74 S. E. 267.

Sufficiently described debt secured by it, to be admitted. **Mason**, 101/659, 28 S. E. 985.

Uncertain in description of premises, when rejected. **Osborne**, 107/282, 33 S. E. 54.

Without proper attestation, good as between the parties, and admissible on proof of execution. **Pulliam**, 117/127, 43 S. E. 407.

Municipal corporation's minutes and records, exemplification of, must be under corporate seal. **Sewell**, 145/19, 88 S. E. 577.

Assent to occupation of street can be shown only by formal action of author-

ities; not by declarations of witnesses that assent was given. **Town of Palham**, 131/325, 62 S. E. 186.

Ordinance not proved by book containing it, with testimony that it was published by authority. **W. & A. R. Co.**, 104/11, 30 S. E. 424.

Muniments of title can be introduced in action against trespass, without pleading them. **Lee**, 138/646, 75 S. E. 1051. If void, should be objected to, when offered; but not to be given effect in any case. **Hutchinson**, 145/325, 89 S. E. 208.

Mutilated book of account, not admitted. **Harrold**, 107/849, 33 S. E. 640.

New promise, unsigned credit on note, when not evidence of. **Moore**, 103/517, 30 S. E. 535.

Newspaper advertisement, admissibility of. **Taylor**, 21 A. 274, 275, 94 S. E. 254. Newspaper articles not admissible in, if not shown to have been authorized or ratified. **Falls City Co.**, 130/560, 61 S. E. 230.

Next friend, want of authority to appear as, when no ground of objection to record. **Carter**, 144/488, 87 S. E. 415.

Notarial certificate filed and permitted to remain in clerk's office, no error in excluding. **Woods**, 143/209, 84 S. E. 450.

Note indorsed in stencil with payee's name, "by [J.], pt.," prima facie admissible. **Hayes**, 143/522, 85 S. E. 699.

Not admitted to show indebtedness to plaintiff, where transfer thereon showed title in another. **Armstrong**, 115/458, 41 S. E. 552.

Not indorsed, sued on by transferee of payee; admissibility of evidence to show failure of consideration, etc. **Deris**, 144/233, 86 S. E. 1093.

Of later date was in renewal of one first given, when admissible to prove. **Garmany**, 124/876, 53 S. E. 669, 110 Am. St. R. 207.

Of vendee of land; admissibility of evidence in suit for breach of agreement of his transferee to pay it. **Stokes**, 143/721, 85 S. E. 895.

Protest of, for non-payment. Notary's certificate is prima facie evidence of facts recited therein. *Patton*, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 595, 4 Ann. Cas. 639.

Signature not authorized or acknowledged, circumstances admissible as tending to show. *Dillard*, 140/17, 78 S. E. 414.

Sued on by transferee bona fide, etc.; admissibility of evidence on defense of non est factum. *Pullin*, 143/184, 84 S. E. 443.

Taken after maturity, testimony of failure of consideration received. *Johnson County*, 118/927, 45 S. E. 705.

Taken by agent in settlement; competency of evidence of his agreement with maker. *Home Fertilizer Co.*, 145/197, 88 S. E. 820.

Testimony as to giving of, when not rejected for want of production of original. *Varn*, 142/243, 82 S. E. 641. Notes recited by security deed; evidence that defendant failed to give them as intended, when competent. *Paden*, 140/46, 78 S. E. 412. Notes of other persons in favor of same payee, sued on by same plaintiff, and pleas filed; what necessary to show relevancy. *Park*, 139/586, 77 S. E. 922.

See Bills and Notes.

Notice of claim for attorney's fees, copy of, and testimony in connection, properly excluded. *Chicago Co.*, 139/817, 78 S. E. 244. Admissibility of notice. *Riverside Milling Co.*, 141/578, 81 S. E. 892; *Anderson*, 141/840, 82 S. E. 246.

Duplicate, retained, admitted as primary evidence. *Savannah Bank*, 6 A. 275, 276, 65 S. E. 35.

In writing, how proved. What necessary to admit secondary evidence. *Sheffield*, 3 A. 200, 59 S. E. 725.

Mailed; presumption as to receipt. *Lowenstein*, 23 A. 261, 98 S. E. 111.

Unofficial advertisement, when not binding as. *Eng.-Am. Co.*, 112/823, 38 S. E. 103.

Of dangerous character of wall, letter of city engineer to mayor, given to proprietor, admitted as. *Curd*, 115/371, 41 S. E. 580.

Posted by railroad company, at ticket-office, not shown to have been read by passenger, inadmissible in its favor, here. *Ga. R. Co.*, 115/1013, 42 S. E. 364.

Officer's certificate as to what his records show, or do not show, not admissible. What necessary to show. *Daniel*, 113/373, 38 S. E. 829. Affidavit not admitted to show. *Finney*, 113/364, 38 S. E. 818.

Order of court, when must be proved by certified extract from minutes. *Odell*, 104/204, 30 S. E. 813.

As prerequisite to valid deed; non-existence not proved by scrivener's not seeing it. *Shelton*, 148/128, 96 S. E. 3.

Without the pleadings on which based, admissibility of. *Ocean S. Co.*, 107/223, 33 S. E. 179.

For sale, conclusive as to necessity. *Green*, 108/356, 33 S. E. 1009; *Davitt*, 108/668, 34 S. E. 327.

Ordinance, exemplification of, not admitted in evidence unless duly certified under the corporate seal. *Central R. Co.*, 111/13, 36 S. E. 299.

For regulation of speed of steam cars, inadmissible as applied to electric cars. *Columbus R. Co.*, 120/589, 48 S. E. 149. Not irrelevant in case of injury to crossing watchman. *L. & N. R. Co.*, 143/748, 85 S. E. 923.

Issue whether of force, when submitted to jury. *Macon R. Co.*, 127/572, 56 S. E. 616.

How proved; and admissibility as evidence. *Nashville Ry.*, 134/618, 68 S. E. 432; *Cason*, 134/787, 68 S. E. 554. Admissibility of book. *Stone*, 131/453, 62 S. E. 592.

Recognized in pleading and evidence, judgment not reversed for lack of proof of it. *Eisfeldt*, 148/828, 98 S. E. 495.

Admissible on issue on negligence in laying railroad-track on street. *Lamb*, 144/334, 87 S. E. 17.

Requiring railroad watchman at street-crossing, when admissible. *Hall*, 144/145, 86 S. E. 316.

Proof of, unnecessary in view of admission in pleading. *Town of Constitution*, 136/779, 71 S. E. 1087.

On subject dealt with by general law, admissibility of. *Ga. Ry. &c. Co.*, 9 A. 107, 70 S. E. 607. Ordinance not in the record, attack on it not considered. *Little*, 9 A. 878, 72 S. E. 436.

Prohibiting blocking of street crossings over railroad, admissibility of. *Southern Ry. Co.*, 3 A. 266, 59 S. E. 927.

Original evidence, effect of agreement that certain reports should be. *Chapman*, 20 A. 215, 216, 92 S. E. 964.

Original paper from clerk's office admissible, if in court. *Manning*, 136/881, 72 S. E. 401. Original, instead of copy, of internal-revenue tax receipt, admitted. *Haar*, 14 A. 549, 550, 81 S. E. 811.

Paper not sworn to, and irrelevant, rejected. *Nelson*, 112/188, 37 S. E. 404.

Objected to and withdrawn, production of, not enforced that objector may introduce it. *Graham*, 101/121, 28 S. E. 609.

Unsigned, when admissible. Part irrelevant and inadmissible, excluded. *Freeman*, 112/48, 37 S. E. 172.

Part of document offered, no error in ruling that the whole should go in evidence. *Bell*, 18 A. 318, 89 S. E. 349.

Of paper introduced, opposite party may read other relevant parts as evidence of party producing. Brief of evidence should contain only the parts read. *Crawford*, 126/763, 55 S. E. 499.

Of statute of another State, introduced without cognate sections. *Southern Ry. Co.*, 7 A. 154, 66 S. E. 535.

Of testimony of witness, from brief of evidence of former trial, when not admitted without other part. *Denson*, 111/809, 35 S. E. 680.

Relevant, but the greater part irrelevant, in document offered as a whole, rejection no cause for reversal. *Ellis*, 109/422, 34 S. E. 567.

Partnership not shown by letter of one party, considered in connection with contract. *Ruff*, 145/83, 88 S. E. 545. Advertisement and contract irrelevant in suit by member of firm

against servant thereof. *Owens*, 139/475, 77 S. E. 635.

Patent commissioner's certificate as to what does not appear on the records of his office, not admitted. *Daniel*, 113/372, 38 S. E. 829.

Pauper affidavit not admissible to show probable non-ownership of property. *Southern Ry. Co.*, 108/201, 33 S. E. 952.

Pawnbroker's ticket, admissibility of. *Wilensky*, 15 A. 360, 83 S. E. 276.

Payment, check as evidence of. *Simmons*, 112/239, 36 S. E. 685.

Executor's return as proof of. *Crawford*, 110/729, 36 S. E. 404.

Testimony of, from book kept by defendant, when not admissible. *Dickson*, 137/299, 73 S. E. 515.

Pending suit by other plaintiff, record of, irrelevant in suit on one of several notes. *Park*, 139/586, 77 S. E. 922.

Photograph, admissibility of. *City of Thomasville*, 22 A. 385, 96 S. E. 335.

Of injured member when admissible in action for malpractice of surgeon. *Pace*, 144/262, 86 S. E. 934.

Of scene of homicide, with person representing position of deceased, when admissible. *Butler*, 142/287, 82 S. E. 654.

Plat and grant without seal, admissible in connection with certified copy and parol proof of loss of seal, though differing as to acreage. *Reppard*, 103/198, 29 S. E. 817.

Admissible in connection with testimony of its correctness as representation of land conveyed. *Parrish*, 142/115, 82 S. E. 520.

By surveyor, admissibility of. *Atlanta R. Co.*, 125/529, 542, 54 S. E. 736.

Delineating parks, sale of lots under, as showing intent to dedicate to public use. *Hurt*, 138/380, 75 S. E. 418. Of survey, as part of description of land conveyed. *Cobb &c. Co.*, 138/589, 75 S. E. 652.

Exception to admission of, must point to a copy of it in the record. *Tarver*, 132/799, 65 S. E. 177, 24 L. R. A. (N. S.) 1161.

Not produced or accounted for, when no reason to exclude deed referring to it. **Aiken**, 134/873, 68 S. E. 937.

Of processioners, only prima facie correct, where no issue as to its correctness has been determined. **McGraw**, 129/780, 59 S. E. 898; **Chambers**, 145/52, 88 S. E. 545. Admissibility of, on objection to scale of measure. **Caverly**, 134/677, 68 S. E. 442. Of survey, as part of return of partitioners, admissible over objection presented. **James**, 140/168, 78 S. E. 721.

Referred to for description, matters shown by, considered as written in instrument. **Sears**, 133/422, 65 S. E. 886.

Referred to in deed does not enlarge or diminish effect of descriptive words, but gives efficacy. **Wooten**, 139/433, 77 S. E. 375.

Refreshing memory of witness by. **Smith**, 22 A. 511, 96 S. E. 334.

When not admissible without proof of correctness. **Parker**, 113/1167, 39 S. E. 475.

Pleading (affidavit and execution on foreclosure of lien) not admissible in. If any entries thereon be material, judge should simply call attention of jury to them. **Hawkins**, 120/617, 48 S. E. 169.

Affidavit and attachment before jury as; not to be introduced in evidence. **Dale**, 140/790, 79 S. E. 1127.

Possession, admissibility of paper to explain, which does not amount to color of title. **Turner**, 141/28, 80 S. E. 461.

Prescriptive title; deeds and memoranda admissible to show good faith, not as muniments of title. **Garbutt Co.**, 137/592, 73 S. E. 841.

Primary; certified extract from minutes of court. **Anglin**, 14 A. 566, 81 S. E. 804.

Proceedings of court, how proved. **Anglin**, 14 A. 566, 81 S. E. 804; **Kinney**, 14 A. 182, 183, 80 S. E. 663.

Processioners' return and map not legally made, ineffective as establishing lines. **Bradley**, 144/478, 87 S. E. 465.

Admissibility of, as muniment of title. **Martin**, 126/436, 55 S. E. 240.

Not admissible, surveyor's certificate and plat not showing lines run around land of applicant. **Parrish**, 140/44, 78 S. E. 420.

Not prima facie proof of boundary lines, where protest filed and pending. **Eubank**, 105/614, 31 S. E. 741.

Only prima facie evidence of correctness of lines, where no objection and no trial. **Bradley**, 144/478, 87 S. E. 465. **Production of papers under notice**. **Central R. Co.**, 2 A. 428, 58 S. E. 674; **Sims**, 2 A. 466, 58 S. E. 693. When not required. **Jewell**, 138/576, 75 S. E. 592.

Of books of municipal corporation, when required. **Town of Adel**, 122/535, 50 S. E. 481.

Of book or paper, no judgment for failure in, until after a failure to comply with a peremptory written order entered on the minutes. **Marshall**, 114/622, 40 S. E. 796.

Of document instantan, when required. **Rylee**, 7 A. 489, 67 S. E. 383. Duty of court to order investigation to determine whether paper is in court. **Moore**, 1 A. 514, 58 S. E. 63. Want of notice, no reason for excluding paper in court. **Manning**, 136/881, 72 S. E. 401.

Of papers for use by grand jury, summary order as to. **Blitch**, 145/882, 90 S. E. 42.

Of paper in criminal case, not required of accused; secondary evidence of its contents admitted. **Nalley**, 11 A. 15, 74 S. E. 567.

Of papers in possession of carrier's receiver's agent, power to compel. **Blitch**, 145/882, 90 S. E. 42.

Of paper, no error in requiring. **A. C. L. R. Co.**, 12 A. 392, 77 S. E. 316.

Nonsuit not granted because of plaintiff's failure to produce. **West**, 22 A. 185, 95 S. E. 721.

Right to except to illegal order for, waived by complying with it. **Mayor &c. of Macon**, 122/800, 50 S. E. 986.

Of paper showing testimony at former trial, when not properly compelled. **A. & B. Ry. Co.**, 134/673, 68 S. E. 593.

Production of papers—(Continued).

When not compelled against non-resident by notice or by subpoena duces tecum. *Pullin*, 143/184, 84 S. E. 443.

Peremptory order for, not proper until court determines the materiality and necessity. *Central R. Co.*, 2 A. 428, 58 S. E. 674.

Part read, party producing may read other relevant parts. *Stone*, 131/453, 62 S. E. 592.

On notice, error to require, and to grant judgment by default for failure. *Ga. Iron Co.*, 104/395, 30 S. E. 878. When no error in not requiring. *Bridges*, 137/107, 72 S. E. 892. No abuse of discretion in refusing judgment as by default. *Carter*, 3 A. 34, 59 S. E. 209. Notice as affecting admissibility. *Fraternal Relief Asso.*, 9 A. 45, 70 S. E. 265. Notice as condition of admitting secondary evidence. *Cutter-Tower Co.*, 5 A. 294, 63 S. E. 58. When notice required. *Ward-Truitt Co.*, 23 A. 672, 99 S. E. 153. Sufficiency of notice. *Virginia-Carolina Chemical Co.*, 23 A. 634, 99 S. E. 154; *A. C. L. R. Co.*, 12 A. 392, 77 S. E. 316. Notice to produce document at designated term; response required at subsequent term to which case continued. *American Ins. Co.*, 6 A. 424, 65 S. E. 160.

Protest, certificate of, prima facie evidence of fact therein recited. *Patton*, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

Publication in public gazette, as evidence of notice. *Bush*, 127/308, 56 S. E. 430, 9 Ann. Cas. 240.

Public policy, evidenced only by constitution, laws, and judicial decisions. *Mutual L. Ins. Co.*, 9 A. 797, 72 S. E. 295.

Railroad Commission rule, fixing rates of fare, relevant on issue as to rate chargeable to passenger from point out of to point in Georgia. *Coyle*, 112/121, 37 S. E. 163.

Railroad ticket signed by agent of purchaser was express contract, binding, if accepted and used. *Southern Ry. Co.*, 108/203, 33 S. E. 952. Proof of identity for validation of, when necessary. *Central Ry. Co.*, 106/829, 32 S. E. 874.

Receipt, as evidence on trial for embezzlement. *Bridges*, 103/22, 29 S. E. 859.

Affidavit acknowledging payment, admissible as. *Crider*, 16 A. 377, 85 S. E. 350.

By one signing as "agent," not admitted without proof of agency. *Mathis*, 18 A. 385, 89 S. E. 435.

By others not shown to have been authorized as committee, not admissible against defendants. *Chicago Building &c. Co.*, 139/817, 78 S. E. 244.

Check as, after its payment. *Simmons*, 111/239, 36 S. E. 685.

Effect of, as evidence. *Crider*, 16 A. 379, 85 S. E. 350.

For internal-revenue tax on liquor, effect of, as evidence of violation of prohibition law. *Bragg*, 15 A. 627, 84 S. E. 82. Original receipt admitted on trial of one charged with sale of liquor. *Haar*, 14 A. 548, 81 S. E. 811.

For liquor, when admissible as against one charged with violation of liquor law. *Bragg*, 15 A. 624, 630, 84 S. E. 82.

For stated sum "to confirm trade" for land, omitting price, does not show contract of sale, under statute of frauds. *Hill*, 7 A. 394, 66 S. E. 1093.

In full, no estoppel to assert unsettled demand. *Armour*, 110/403, 35 S. E. 787.

Instrument in form of, not held irrelevant; pleading showing it was intended by parties to refer to the matter in controversy. *Austin*, 131/295, 62 S. E. 196.

Prima facie evidence of payment. *Royal Benefit Society*, 14 A. 205, 80 S. E. 545. Ordinarily subject to explanation, if it be a mere receipt for money paid. *Graham*, 131/785, 63 S. E. 348. Whether sufficiently explained is question for jury, not court. *Mallard*, 105/400, 31 S. E. 45.

Only prima facie evidence of payment; contradicted by parol. *Gibson*, 13 A. 461, 79 S. E. 354; *A. C. L. R. Co.*, 8 A. 45, 68 S. E. 743. When recitals in bill of lading can not be contradicted. *L. & N. R. Co.*, 8 A. 83.

68 S. E. 617. Check reciting payment in full. *Copeland*, 8 A. 633, 70 S. E. 30.

Of warehouseman, admissibility and effect of. *Atlantic Compress Co.*, 15 A. 747, 84 S. E. 155.

Issued by clerks of decedent, when admissible. *Third National Bank*, 135/324, 69 S. E. 482.

Unsigned, effect of. *Armour Fertilizer Works*, 22 A. 146, 147, 95 S. E. 746.

Receiver's appointment, admissibility of application for. *Stapleton*, 19 A. 37, 90 S. E. 1029.

Error in excluding certified transcript showing. *Tallulah Falls Ry. Co.*, 137/568, 73 S. E. 838.

How proved; admissibility of evidence to show appointment was void. *Ocean S. Co.*, 107/220, 33 S. E. 179. Receivership proved by certified copy of order appointing receiver. *Cain*, 7 A. 462, 67 S. E. 127.

Receiving affidavit after hearing and before decision, without notice to other party, erroneous. *Thompson*, 138/267, 75 S. E. 357.

Recital in deed, effect of, as evidence. *Jenkins*, 109/40, 34 S. E. 355. Not prima facie evidence of power to sell. *Waller*, 114/384, 40 S. E. 254.

In motion to dismiss, no evidence of truth, of its allegations. *Fenwick Shipping Co.*, 133/48, 65 S. E. 140.

In receiver's application to sell, that transferee held title as security, when not admissible. *Bank of Garfield*, 138/799, 76 S. E. 95.

In tax execution, of jurisdictional facts, not taken as true without proof. *Shippen Lumber Co.*, 146/349, 91 S. E. 111.

In will, not effective to bind vendee of testatrix. *Manning*, 135/602, 69 S. E. 1126.

Of fact in public statute not conclusive, but may be disproved. *Mitchell*, 114/275, 40 S. E. 287.

Record, absence of entry from, may be proved by witness who has examined. *Martin*, 137/286, 73 S. E. 387; *Jor-*

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dan, 127/278, 56 S. E. 422. Not shown by certificate, but by witness. *Greer*, 104/552, 30 S. E. 943; *Daniel*, 113/373, 38 S. E. 829; *Griffin*, 115/612, 41 S. E. 1003.

Absence of, not conclusive evidence of absence of action by municipal authority. *McWilliams*, 138/581, 75 S. E. 645.

Absence of, not proved by testimony of clerk's statement to inquirer. *Sterling*, 137/177, 73 S. E. 374.

Admissibility of certified copy of. *Lee*, 138/646, 75 S. E. 1051.

Admissibility of testimony as to matters shown by. *Pitts*, 15 A. 436, 83 S. E. 673. Oral testimony of one who had examined records, as to what did not appear on them, admitted; aliter, as to matter appearing thereon. *Vizard*, 117/67, 69, 43 S. E. 426.

Admissible to attack judgment for want of jurisdiction. *Ansley Co.*, 120/618, 48 S. E. 228.

Certificate of officer that records show, or do not show, certain facts, not admissible. *Daniel*, 113/373, 38 S. E. 829.

Compulsory production of, by officer, as evidence against himself. *Kent*, 18 A. 30, 88 S. E. 913.

Constitutional law as to records, public acts, and judicial proceedings of other States. *Underwood*, 142/442, 83 S. E. 208, L. R. A. 1915B, 674.

Disclosing jurisdiction in court of ordinary, relevancy of. *Bowen*, 144/1, 85 S. E. 1007.

From another State; admissibility of exemplification. *Stewart*, 18 A. 519, 89 S. E. 1052. Authentication of. *Conrad*, 123/242, 51 S. E. 299.

How proved. From court of ordinary. In court where case is tried. *Sellers*, 127/634, 56 S. E. 1011.

Introduced in evidence does not thereby become part of the record of the cause, but by being in brief of evidence, which may become part of record. *Maloy*, 134/433, 68 S. E. 80; *Robinson*, 134/777, 68 S. E. 553.

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Of bill of sale attacked and aided by evidence as to actual place of its execution. **Rowe**, 132/426, 64 S. E. 468.

Of bond, when admissible in lieu of original. **Richardson**, 103/741, 30 S. E. 573.

Of claim case, whole of, admissible on hearing for appointment of receiver. **Young**, 133/700, 66 S. E. 925.

Of coal consumption, when not admitted. **Gulfport Oil Co.**, 135/198, 69 S. E. 160.

Of conditional-sale note attested by notary disqualified by interest as partner or stockholder, ineffective as notice, and paper not admissible. **Betts-Evans Co.**, 2 A. 718, 59 S. E. 8.

Of conviction, when admissible, excluding evidence introduced on that trial. **Folks**, 135/179, 69 S. E. 24.

Of conviction of principal, effect of, on trial of accessory. **Rawlins**, 124/56, 52 S. E. 1.

Of court of ordinary; sufficient certificate. **Harrell**, 21 A. 525, 94 S. E. 830.

Admissibility of recorded deed in evidence. **Hansen**, 132/654, 662, 64 S. E. 800. Received without further proof, if no affidavit of forgery. **Gilmer**, 146/721, 92 S. E. 67. Admissible to show both execution and delivery. **Parker**, 101/166, 28 S. E. 681. But not sufficiently attested, record a nullity. **McCandless**, 101/180, 28 S. E. 663; **Simmons**, 144/845, 88 S. E. 199. Deed to growing timber not admissible as registered deed, if attested by sole witness, though a notary. **Kimbrell**, 139/146, 76 S. E. 1024.

Deeds registered, showing insufficient to admit certified copies of. **Smith**, 110/650, 36 S. E. 105. Unattested, record null. **Stallings**, 110/882, 36 S. E. 227.

Deed executed out of Georgia, not entitled to registration in 1883 on acknowledgment before clerk of court of record of other State. Otherwise since act of 1893. **Crummey**, 114/746, 40 S. E. 765.

Record—(Continued).

Of deed or mortgage, effect of, as evidence. **Cammon**, 20 A. 175, 92 S. E. 957.

Of deed or mortgage, objection to, for non-account of original, when not passed on. **Bowling**, 142/397, 83 S. E. 112.

Of deed, presumption of genuineness from, subject to rebuttal and proof of forgery. **Hansen**, 132/649, 64 S. E. 800.

Of defectively acknowledged instrument (though apparently regular), when subject to attack by parol. **Southern Iron & Co.**, 138/261, 75 S. E. 248, 41 L. R. A. (N. S.) 375.

Of exemption of personalty only, irrelevant to issue involving land. **Prince**, 148/113, 95 S. E. 976.

Of former suit, admissibility of. **Jones**, 137/561, 73 S. E. 835. In ejectment. **Chatman**, 127/360, 56 S. E. 436. On issue of adverse possession. **Godley**, 132/514, 64 S. E. 546.

Where retaxit entered, whole of, admissible for what purposes. **Armstrong**, 106/510, 32 S. E. 590.

Of homestead taken by claimant's husband in distinct lot of land, not admissible. **Brand**, 133/750, 66 S. E. 935.

Of illegal partition proceeding, admissible on question of estoppel. **Crumley**, 141/603, 81 S. E. 871.

Of instrument, not admissible as color of title. **Turner**, 141/27, 80 S. E. 461. As notice. **Coursey**, 141/66, 80 S. E. 462. See **Mays**, 141/641, 81 S. E. 853.

Of judgment, copy attached to plea of res judicata in same court, judicial cognizance of, not taken. **Glaze**, 105/298, 31 S. E. 169.

Of judicial proceeding in other State admissible under what certification. **Parker**, 143/422, 85 S. E. 338.

Of lost deed, when admitted. **Flint River Lumber Co.**, 134/627, 68 S. E. 436. Testimony of mutilation of record books, etc., when not relevant. **Orr**, 145/137, 88 S. E. 669.

Of receivership proceedings admitted, to show admission in answer.

Record—(Continued).

as to insolvency. **Whitaker**, 11 A. 220, 75 S. E. 258.

Of suit against main debtor, no part of record of garnishment case. May be introduced to evidence rendition of valid judgment. **Holbrook**, 114/1, 4, 39 S. E. 937, 938.

Of suit for damages to minor, by his father as next friend, not admissible as conclusive of liability in suit for loss of the minor's services. **Hoop-er**, 112/96, 37 S. E. 165.

Of suit, when error in admitting, against one who was not a party to it. **Almand**, 113/987, 39 S. E. 421.

Of suit, to which claimant was no party, when not admissible to show that indebtedness was contracted before conveyance attacked as fraudulent. **Hinkle**, 133/255, 65 S. E. 427.

Of tax fi. fa., as evidence, explanation of mistake in. **Hilton**, 107/821, 33 S. E. 715.

Of year's support proceeding, when not admissible to illustrate whether applicant was wife. **Folks**, 135/179, 69 S. E. 24.

Original petition and order in superior court, or minutes of that court, not admissible in city court. **Traylor**, 11 A. 497, 75 S. E. 828. Error in not allowing introduction of original court paper, after agreement between counsel that the original records could be used as evidence. **Kelly**, 21 A. 119, 94 S. E. 80.

Original record of court paper, not ordinarily admissible in another court. **Hall**, 12 A. 492, 77 S. E. 878; **Georgia Engineering Co.**, 135/58, 68 S. E. 794; **Belt**, 103/13, 29 S. E. 451; **Cramer**, 113/968, 39 S. E. 459. Of bankruptcy proceeding, not admissible; certified copy is best evidence. **Whitaker**, 11 A. 209, 220, 75 S. E. 258; **Traylor**, 11 A. 497, 75 S. E. 828. When admissible over objection that certified copy should be offered. **Stewart**, 143/22, 84 S. E. 63.

Presumptive evidence of existence of original. **Hayden**, 103/431, 30 S. E. 287.

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Record—(Continued).

Proceedings of court of, ascertained from its own records; not by testimony. **Wood**, 145/256, 88 S. E. 980.

Of municipal corporation, how proved. **Central R. Co.**, 111/15, 36 S. E. 299.

Partial examination of, when of no evidentiary use. **Wilson**, 127/316, 56 S. E. 457.

Of paper not legally recordable is not evidence. **Witt**, 140/48, 78 S. E. 467.

Relationship of plaintiffs claiming under judgment in favor of "the heirs general" of a named person, and under a deed naming them as such, need not be proved, in order to render certified copies admissible, when. **Vaughan**, 113/103, 38 S. E. 310.

Report of conductor to superintendent of railroad company, for purpose of submission to its counsel, was a privileged communication; production not enforced. **A. C. L. R. Co.**, 21 A. 454, 455, 94 S. E. 584.

To railroad, of killing, not shown to have been made by agent authorized, not received. **Young**, 1 A. 317, 57 S. E. 921.

Res judicata; admissibility of record of former suit, to meet plea of settlement. **Jones**, 137/561, 73 S. E. 835.

Return of sheriff, testimony contradicting, when not admissible. **Hawkins**, 131/347, 62 S. E. 285.

Revenue stamp, absence of, excludes document in Federal, not State court. **Small**, 112/279, 37 S. E. 481, 53 L. R. A. 130, 81 Am. St. R. 50.

Road, order of county commissioners as to, though not accompanied by proceedings on which based, admissible on proceeding to abate nuisance, in connection with oral testimony as to prescriptive right in public. **Savannah R. Co.**, 118/738, 45 S. E. 623.

Sale, conditional bill of, how properly executed and recorded, to be admissible in. **Anderson**, 116/732, 42 S. E. 1026.

Effect of invoice as evidence of. **Furst**, 117/474, 43 S. E. 728.

Of land, order of court for, must appear to refer to the land conveyed, to carry title. *Hall*, 122/252, 50 S. E. 106.

Schedule of property sought to be exempted, defective, when admissible.

Piedmont Asso., 115/417, 41 S. E. 661.

Seal of corporation must be attached to exemplification of record of municipal corporation, to render admissible. *Central R. Co.*, 111/15, 36 S. E. 299.

Whether necessary, to render certified copy admissible. *Kinney*, 14 A. 180, 80 S. E. 663.

Sentence, how proved. *Anglin*, 14 A. 566, 81 S. E. 804.

Separate tender of several writings, proper, though they correlate. But their collective tender and admission, when not error for reversal. *Lee*, 124/495, 52 S. E. 806.

Service, acknowledgment of, for D. et al., no evidence of, as to any one but D. *Mut. B. Co.*, 112/469, 37 S. E. 713; *Orr*, 112/806, 38 S. E. 98.

Affidavit of, signed by one as "L. C.," proved untrue on trial of levy and claim. *Weekes*, 101/314, 28 S. E. 853.

Entry not admitted to show, on person not named in it. Testimony that person named was manager for defendant, repelled. *Hodges*, 14C/569, 79 S. E. 462.

Officer's return as evidence of; when sufficient, though defective. *Phillips*, 132/413, 64 S. E. 456.

Return of, admissibility of original, on trial of traverse of amended return. *News Printing Co.*, 113/233, 38 S. E. 853.

Return of, conclusive unless traversed; but not evidence of matters not subject of return. *Kimsey*, 136/369, 71 S. E. 675.

Of summons; docket entries as evidence. Testimony of officer, to show. *Battle*, 107/130, 32 S. E. 838.

Return is evidence of, and should be in record. *Jones*, 120/321, 48 S. E. 25.

Shown by record, collateral attack of judgment for want of service not allowed. *Morris*, 146/746, 92 S. E. 44.

Testimony denying, when not receivable after rendition of judgment. *Ketterer*, 142/441, 83 S. E. 116.

Settlement of accounts, record of former suit admissible as circumstance, subject to explanation. *Ray*, 106/253, 32 S. E. 156.

Sheriff's deed and fi. fas. not excluded for alleged uncertainty of levies. *Elwell*, 101/496, 28 S. E. 833.

Under wild-land tax execution, admissible as color of title. *Greer*, 104/552, 30 S. E. 943.

To be admissible, as conveyance (not as color) of title, must be accompanied by judgment. *Megahee*, 143/738, 85 S. E. 877.

Offered as evidence of title (not as color of title), was not admissible. *Coursey*, 141/65, 80 S. E. 462.

Not excluded because entry of levy did not recite notice given to tenant in possession. *Keaton*, 136/189, 70 S. E. 1110.

Not admissible to show title, not following tax fi. fa. and entry of levy. *Thompson*, 134/80, 67 S. E. 446.

Not admissible unless accompanied by tax execution under which sale was made. *Carr*, 108/756, 33 S. E. 190.

Admitted on issue of estoppel. *Parks*, 137/578, 73 S. E. 839.

Without execution under which sold, admissible as color of title. *Bunger*, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173; *Cox*, 139/25, 76 S. E. 857.

Signature, adoption of, as his own, by officer, where written by another, inferred from evidence as to subsequent acts. *Vickers*, 128/794, 58 S. E. 44.

By stencil; admissibility of paper so signed. *Bell*, 125/511, 54 S. E. 532.

Comparison of signatures on issue as to genuineness; writing excluded where not submitted to opposite party before he announced ready for trial.

Marietta Fertilizer Co., 22 A. 604, 96 S. E. 711.

Genuineness of; admissibility of evidence. **Strickland**, 142/120, 122, 82 S. E. 531.

No better proof of genuineness than testimony of one who saw it written. **Wells**, 140/125, 78 S. E. 823, 47 L. R. A. (N. S.) 722, Ann. Cas. 1914C, 898.

Of absent witness to will, how proved. **Brown**, 129/92, 58 S. E. 702.

Of contract, proof of. **White**, 17 A. 551, 554, 87 S. E. 831. Of note. **George**, 16 A. 472, 85 S. E. 686. Of testator. **Brown**, 129/92, 58 S. E. 702.

Of testator to will, competency of testimony to show genuineness of. **Shewmake**, 144/801, 817, 87 S. E. 1046.

One signing apparently as maker of contract, allowed to show that he signed only as witness. **Thompson**, 9 A. 367, 71 S. E. 678.

Proof of. **Borders**, 18 A. 333, 89 S. E. 451; **Chamblee**, 20 A. 527, 93 S. E. 239. By comparison. **Vizard**, 119/924, 47 S. E. 348; **Paulk**, 8 A. 738, 70 S. E. 145; **Wilson**, 10 A. 99, 72 S. E. 943.

Proof of genuineness required. **Lumpkin**, 15 A. 816, 84 S. E. 216.

Sufficiency of proof as to genuineness. **National Produce Co.**, 10 A. 338, 73 S. E. 606.

Signing is the ordinary evidence of express assent to contract. **Southern Express Co.**, 134/449, 67 S. E. 944, 137 Am. St. R. 227.

Statute of frauds, correspondence as to sale of land, sufficient under. **Brooks**, 103/712, 30 S. E. 630.

Writings not constituting contract meeting requirements of. **Timmons**, 141/719, 82 S. E. 29.

Stenographic report of testimony on former trial, was not documentary evidence. **Golden Georgia Limited**, 113/982, 39 S. E. 476.

Stock held or subscribed for, presumed from entry on company's books. **Torras**, 108/348, 33 S. E. 989.

Book, exclusion of, in suit on subscription to stock, when no cause for new trial. **Hardee**, 140/527, 79 S. E. 117.

Certificates, when not admissible without proof of genuineness of signatures. **Whitaker**, 11 A. 209, 75 S. E. 258.

Subscription sued on; admissibility of certificate given by representative of promoters. **Hardee**, 140/529, 79 S. E. 117.

Street, map (proved to be correct delineation) admissible to illustrate existence of. **Ga. R. Co.**, 134/871, 68 S. E. 703.

Stubs of money orders, when admitted. **Gary**, 7 A. 501, 67 S. E. 207.

Subscribing witness, when execution of transfer on mortgage need not be proved by. **Prescott**, 133/404, 65 S. E. 877.

When need not be produced. **White**, 17 A. 551, 87 S. E. 831.

Effect of death of. **Standback**, 106/81, 31 S. E. 805.

Surrender of principal by bail, best evidence of, is exoneretur entered on minutes. **Perkins**, 1 A. 250, 58 S. E. 133.

Survey and plat admissible on testimony of civil engineer that they are correct. **Roberts**, 146/490, 91 S. E. 675. **Wooten**, 139/433, 77 S. E. 375.

Plat, admissibility of. **Atlanta &c. R. Co.**, 125/529, 542, 54 S. E. 736. Surveyor's certificate to map of lands, no error in admitting, over objections here presented. **Brookman**, 148/722, 98 S. E. 543.

Superior-court rule touching, refers to official survey admissible on certificate of officer. **Wooten**, 139/436, 77 S. E. 375.

Tax (U. S.), for sale of liquor, possession of receipt for, as evidence of violation of prohibition law. **Allen**, 11 A. 245, 75 S. E. 11. Certified copy from internal-revenue collector's records, as evidence of payment of. **Daniel**, 11 A. 800, 76 S. E. 162; **Huckabee**, 7 A. 677, 67 S. E. 837.

Tax—(Continued).

Deed, etc., admitted as color of title. **Anderson**, 126/396, 55 S. E. 19.

Digest, admissibility of. **Johnson**, 134/801, 68 S. E. 731.

Digest, contents of, can not be shown by affidavit of tax-collector. **Finney**, 113/364, 38 S. E. 818.

Digest, exemplification from, admissible on inquiry into financial condition of person. **Churchill**, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

Execution against wild land, sufficient as to recitals. **Greer**, 104/552, 30 S. E. 943.

Return, shown by certified copy from tax digest. **Baker**, 10 A. 679, 73 S. E. 1075.

Returns admissible to show that defendants returned land lots as containing smaller quantity of land than they now claim. **Ivey**, 124/159, 52 S. E. 436, 110 Am. St. R. 160.

Returns admitted, where it was material to ascertain whether representations of one who made them, as to amount of his assets, were true. **Mashburn**, 117/569, 44 S. E. 97.

Returns considered in estimating damages. **Southern Ry. Co.**, 104/560, 30 S. E. 795.

Returns, evidential effect of. **Mc-Lendon**, 3 A. 206, 59 S. E. 718.

Returns in name of male member of household did not negative adverse possession of female. When not admissible to impeach witness **Gilmer**, 146/724, 725, 92 S. E. 67.

Return not made, not shown that party had no property. **Stephens**, 8 A. 639, 70 S. E. 55.

Returns of defendant in fi. fa., when admissible, on issue as to whether property was subject. **Summerlin**, 8 A. 424, 69 S. E. 585. Not including property levied on, when not admissible in behalf of claimant. **Winn**, 127/385, 56 S. E. 406.

Returns proved by properly certified transcript, without producing digest. **McMillan**, 133/761, 66 S. E. 943.

Return, testimony as to, inadmissible here. **Levy**, 135/94, 68 S. E. 1038.

Testamentary instrument not received in evidence, without proof of its probate. **Jackson**, 148/312, 314, 96 S. E. 430.

Not executed, not admissible as evidence of gift. **Albany Co.**, 112/450, 37 S. E. 707.

Threatening letter not properly identified. **Covington**, 15 A. 513, 83 S. E. 867.

Ticket of pawnbroker, admissibility of. **Wilensky**, 15 A. 360, 83 S. E. 276.

Title, application and order for sale rejected as evidence of, where order void. **Toombs**, 127/767, 57 S. E. 59.

Color of; documents admissible as. **Harris**, 126/330, 55 S. E. 59; **Anderson**, 126/396, 55 S. E. 19; **Bennett**, 126/411, 55 S. E. 177.

Color of, letter admitted as, its execution being proved, in connection with testimony applying it to land in dispute. **Wooding**, 112/509, 37 S. E. 720.

Deed and will admissible as links in chain of, over objection for informality in sale. **Hamilton**, 127/762, 56 S. E. 1022.

Deeds void as evidence of; when admissible as color of title. **Wood**, 145/259, 88 S. E. 980; **Willis**, 145/438, 89 S. E. 427.

Entry guaranteeing payment and waiving protest, etc., when not admissible as transfer of. **Andrews**, 1 A. 560, 58 S. E. 130.

Judgment in dispossessory-warrant case not admitted on issue as to. **Jordan**, 103/483, 30 S. E. 265.

Judgment on partition admissible to establish, as against defendant who was party notified. **Chat. L. Co.**, 137/64, 72 S. E. 504.

Of plaintiff in petition to enjoin timber cutting, aliunde evidence not admissible to show, where not shown by abstract attached to petition. **Wiggins**, 117/164, 43 S. E. 432.

On trial of, mesne conveyance from widow to whom year's support was set apart were relevant. **Sizemore**, 130/667, 61 S. E. 536.

Or color of title, when partition proceeding not admissible to show. **Levy**, 135/94, 68 S. E. 1038.

Proof of, may be confined to allegations in abstract. Recovery on other evidence unobjected to. *Hester*, 141/832, 82 S. E. 250.

Resting partly in parol, not perfect. *Powell*, 120/36, 47 S. E. 499.

Sufficient proof, in arson. *Morgan*, 120/502, 48 S. E. 238.

Original grant from State admissible, though copy has already been admitted. *Tarver*, 132/799, 65 S. E. 177, 24 L. R. A. (N. S.) 1161.

When crop mortgage and rent note are irrelevant in case involving ownership of land. *Guin*, 6 A. 489, 65 S. E. 330.

Written contract showing, received, especially where defendant denies title in plaintiff. *Henson*, 108/567, 33 S. E. 911.

Transfer indorsed on timber conveyance, how admissible, though not evidencing passage of title. *Gaskins*, 141/552, 553, 81 S. E. 882.

Trover suit, attachment for purchase-money and dismissed levy rejected on trial of. *Coley*, 139/239, 240, 77 S. E. 77.

Trustee's application for leave to sell, properly excluded here. *Trammell*, 115/874, 42 S. E. 246. Trustee's notes and mortgage not rejected on foreclosure proceeding, though containing unauthorized stipulations. *Wagon*, 104/417, 30 S. E. 895.

United States records, proof of. *O'Connor*, 11 A. 246, 248, 75 S. E. 110. Congress powerless to prescribe rules of evidence for State courts. *Ib.*

Unsigned paper, when admissible in connection with other like papers duly signed. *Riverside Milling Co.*, 141/579, 81 S. E. 892.

Admissible, testimony conflicting as to its being accepted and acted on. *Gem Mills*, 140/15, 78 S. E. 408.

In handwriting of decedent, tending to show title in another. *Elwell*, 101/496, 28 S. E. 833.

Usury shown by recital in security-deed. *Beach*, 101/357, 28 S. E. 110.

Value, letter admissible on question of, though written by witness two years

before he testified. *Reeves*, 140/101, 78 S. E. 717.

Verdict and decree purporting to have been rendered by consent of parties, admissible only upon prima facie proof of assent. *Kidd*, 105/209, 31 S. E. 430.

As evidence, when no judgment entered. *Harris*, 117/935, 44 S. E. 11. Voter's registry book, when admissible. *Johnson*, 134/801, 68 S. E. 731. Voting not proved by list of voters, kept by election manager, having voter's name thereon. *Banyon*, 108/49, 33 S. E. 845.

Warehouse receipts, admissibility of. *Atlantic Compress Co.*, 15 A. 747, 84 S. E. 155. Warehouseman's books, admissibility of. *Shields*, 22 A. 507, 96 S. E. 330.

Warrant, admissibility of entries on, as original evidence on trial under indictment, when made by magistrate presiding at preliminary hearing. *McCallman*, 121/491, 49 S. E. 609.

For arrest of accused, admissibility of. *McCray*, 134/421, 68 S. E. 62, 20 Ann. Cas. 101; *Cason*, 134/787, 68 S. E. 554.

Is best evidence of its contents. *Chastain*, 3 A. 448, 60 S. E. 112.

Way-bills of railroad company, not admissible in its favor. *Southern Ry. Co.*, 115/635, 42 S. E. 15.

Will, admissibility of, that does not refer to land in controversy; and what presumption might arise. *Dyson*, 130/580, 61 S. E. 468, 124 Am. St. R. 179.

Attested by but two witnesses, inadmissible. *Ala. R. Co.*, 112/62, 37 S. E. 91. Judgment of probate excluded. *Janes*, 123/43, 50 S. E. 954.

Certified copy, evidence of probate; copy not properly certified by ordinary not showing he had no clerk. *Phillips*, 5 A. 634, 63 S. E. 808.

Effect of cancellations or obliterations in. *McIntyre*, 120/67, 47 S. E. 501, 102 Am. St. R. 71, 1 Ann. Cas. 606. Declarations of testator on issue of revocavit vel non. *Kimsey*, 120/413, 47 S. E. 899.

Will—(Continued).

Introduction of, not necessary, in action for land by executor or by administrator with will annexed, in order to show right to recover, or that the land was devised in the will. (Former decisions overruled.) *Lamar*, 113/781, 39 S. E. 498.

Item of, relevant here. *Hicks*, 127/170, 56 S. E. 307.

No error in refusing to admit, in suit against executor of plaintiff's father, for rent, where there was no question that plaintiff was owner of the property. *Parker*, 113/1168, 39 S. E. 475.

Not admissible without proof of execution, on probate in solemn form, though previously admitted to probate in common form. *Peale*, 131/830, 63 S. E. 581.

As evidence of mental capacity, received. *Watkins*, 23 A. 183, 98 S. E. 94.

Probated, certified copy of, is evidence, not the original will. *Smith*, 127/486, 56 S. E. 640.

Probated in other State, without judgment of probate, inadmissible, though copies of affidavits of attesting witnesses and certificate of clerk that it was probated accompany it. *Youmans*, 122/331, 50 S. E. 141.

Writing itself the best evidence of its contents; not of what one person told another were its contents. *Minnesota Co.*, 122/20, 49 S. E. 783. Writing the best evidence; no ground for exclusion of oral testimony, when. *Pitts*, 15 A. 436, 83 S. E. 673.

Attacked by plea of non est factum, what sufficient to authorize its introduction. *Jewell*, 109/241, 34 S. E. 337.

Proof of genuineness not required, in view of custody from which paper came. *Borders*, 18 A. 334, 89 S. E. 451.

Not properly identified as letter written by accused. *Covington*, 15 A. 513, 83 S. E. 867.

Admissibility of entries or endorsements on. *McBrayer*, 122/245, 50 S. E. 95.

Contemporaneous, as explanatory of deed. *McCreary*, 103/528, 29 S. E. 960.

Immaterial, when not sufficiently descriptive of land in dispute as to prior possession. *Priester*, 135/694, 70 S. E. 646. Writings admissible on evidence tending to prove their execution, and their ratification, by the maker, though other evidence strongly tends to show it was impossible, for him to have signed them on their date. *Sanford*, 114/1005, 41 S. E. 668. Written evidence not to be introduced, without special permission of court, while witness is undergoing cross-examination. *Crawford*, 4 A. 800, 62 S. E. 501.

Year's support, judgment setting apart, admissible without transcript of prior proceedings. *Stringfellow*, 112/494, 37 S. E. 767.

Return entered nunc pro tunc after nine years, record admissible. Description sufficiently certain. *Vaughn*, 122/517, 37 S. E. 752.

Legal proof of setting apart. Ex parte order of ordinary at chambers in vacation, correcting record of return, not admissible. *Watson*, 143/426, 85 S. E. 324.

6. EXPERT AND OPINION EVIDENCE.

"About" a stated value, testimony that property was, how treated. *Atlantic Ry. Co.*, 125/483, 54 S. E. 530.

Admission of opinion, at interlocutory hearing, not necessarily cause for reversal. *Savannah River Terminals Co.*, 148/187, 96 S. E. 257; *Asa G. Candler Inc.*, 148/193, 96 S. E. 226.

Advertisement, conclusion of witness not admissible, as to whether certain property was covered by. *Parks*, 142/391, 83 S. E. 100.

Adulteration, proof of. *Peninsular Naval Stores Co.*, 20 A. 505, 93 S. E. 159.

Advance, that payment of money was, when not proved by assertion of wit-

ness. *Fuller*, 2 A. 696, 59 S. E. 1; *Walters*, 6 A. 565, 65 S. E. 357.

Agency, conclusion as to existence of, without probative value, when. *Herrington*, 6 A. 864, 65 S. E. 1064. Testimony as to authority as agent, by one claiming such authority; when not mere opinion. *Connor*, 7 A. 153, 66 S. E. 546.

Alteration of note, expert testimony as to, and that impression of "indelible," pencil would rapidly fade, admitted. *Thompson*, 8 A. 24, 68 S. E. 513.

Amanuensis, belief or opinion of, that, from affectionate character of letters, husband was passionately fond of wife; incompetent. *Bowens*, 106/760, 32 S. E. 666.

Appearance of embarrassment, testimony as to, not excluded as mere conclusion. *Glover*, 15 A. 45, 54, 82 S. E. 602. Inability to describe indicia did not require exclusion of such testimony. *Glover*, 15 A. 45, 54, 82 S. E. 602.

Of excitement, or the contrary, admissibility as to. *Roberts*, 123/146, 51 S. E. 374.

Attorney, opinion of, as to what fee reasonable, does not authorize direction of verdict. *Shaw*, 139/482, 77 S. E. 677.

Opinion of, on matter submitted to him, when not admissible. *Hudson*, 104/132, 30 S. E. 688.

Conclusion of, may be asserted in argument, if fairly inferable from evidence. *Wrightsville R. Co.*, 118/583, 45 S. E. 453; *Sims*, 118/774, 45 S. E. 621. Opinion of counsel as to their own exercise of diligence, stating no fact, insufficient. *Taylor*, 132/235, 63 S. E. 1116.

Belief of witness, no substitute for substantive facts. *Griffin*, 2 A. 534, 58 S. E. 781.

As to innocence of defendant, testimony as to, not admissible. *Henry*, 20 A. 742, 93 S. E. 311.

Board of education, conclusions of, upon evidence introduced on voluntary investigation of accounts of school commissioner, not admissible. *Bridges*, 110/246, 34 S. E. 1037.

Bookkeeper's testimony as to account, not objectionable as stating conclusion, when. *Walker*, 6 A. 521, 65 S. E. 301.

As to results of examination of accounts, admissibility of. *Crawford*, 126/763, 55 S. E. 499. That merchant's books were not kept in due course of business, not competent. *Goldberg*, 144/784, 87 S. E. 1077. Expert testimony as to bookkeeping, when not pertinent. *Morris*, 106/462, 32 S. E. 595.

Admissibility of testimony of expert as to irregularities in books of account, meaning of items, value of notes, and insolvency. *Spence*, 20 A. 62, 92 S. E. 555.

Books of science or art not admissible to prove expert opinions. *Flemister*, 140/512, 79 S. E. 148; *Cook*, 103/386, 30 S. E. 27; *Quattelbaum*, 119/435, 46 S. E. 677. Error in allowing counsel to read extract to jury, from medical book, immaterial here. *Silver*, 13 A. 726, 79 S. E. 919. Opinion of expert, derived from books, receivable. *Boswell*, 114/40, 39 S. E. 897.

Breeding capacity lacking in stallion, admissibility of opinion as to. *Crouch*, 9 A. 696, 72 S. E. 61.

Building, expert testimony to show whether it "came up to the specifications." *Hilliard*, 134/817, 68 S. E. 649.

Bullet, admissibility of opinion as to size of. *Garner*, 6 A. 788, 65 S. E. 842.

Business would compete with the one sold, held to be matter of opinion. *Shaw*, 133/447, 66 S. E. 240.

Careful, no error in refusing to receive testimony that a person was. *Adams*, 142/498, 499, 83 S. E. 131.

Character. No error in not allowing witnesses to testify that they had often visited the place of business of defendant (charged with selling liquor), and, from their knowledge of him and his business, did not believe he was guilty. *Henry*, 20 A. 742, 93 S. E. 311.

Charge as to weight of expert's testimony. *Pritchett*, 125/406, 54 S. E. 131. Error in charge as to expert

testimony. *Merritt*, 107/679, 34 S. E. 361; *Williams*, 123/138, 51 S. E. 322.

Child, opinion that contestant for custody of, is unfit or improper, witness not allowed to give. *Milner*, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977; *Moore*, 128/91, 57 S. E. 110. Touching best interest, etc., not receivable. *Milner*, 139/110, 76 S. E. 860. Opinion of child's incapacity to render services, properly excluded. *Central Ry. Co.*, 143/753, 85 S. E. 920. Statement of a man that he was father of child, whether objectionable as a mere conclusion. *Kennedy*, 9 A. 223, 70 S. E. 986.

Cipher-code words, objection that witness was not expert as to, not sustained. *Allen*, 129/751, 59 S. E. 813.

Club in evidence, opinion of weight of, no error for reversal in allowing witness to give. *Hall*, 133/177, 65 S. E. 400.

Conclusion, deduction, or inference of witness, not competent. His impression, when not so held. *Marshall*, 136/543, 71 S. E. 893; *National Pencil Co.*, 19 A. 430, 91 S. E. 432.

That this contract covers the matter in question, rejected as. *Ala. Con. Co.*, 131/365, 62 S. E. 160.

That another "was going to town," objectionable; not sufficiently material to require new trial. *Robinson*, 130/361, 60 S. E. 1005.

That witness could have seen person, not excluded as. *Pride*, 133/438, 66 S. E. 259.

That she was well known on street where she lived, no conclusion. *Western Union Tel. Co.*, 144/110, 86 S. E. 221.

That marks on arm could have been made by a spring, not admissible. *Ala. & C. R. Co.*, 140/792, 797, 79 S. E. 1113, Ann. Cas. 1915A, 1159.

As to horse-power of engine, not admissible. *International Harvester Co.*, 135/105, 106, 68 S. E. 1093.

Admissibility of. *Southern Ry. Co.*, 6 A. 177, 64 S. E. 703; *Varn*, 142/244, 82 S. E. 641; *Perdue*, 135/273,

69 S. E. 184. From facts stated by him. *Smith*, 14 A. 17, 80 S. E. 22.

Testimony that accused showed a sign and threatened the witness, not objectionable as. *Knight*, 148/40, 95 S. E. 679.

As to other person's knowledge of contents of affidavit, objectionable. *Brewer*, 144/549, 87 S. E. 657.

Incompetent, as to what another person knew; that company was benefited, that officers had authority. *Bank*, 138/802, 76 S. E. 95.

Conjecture of witness, properly excluded. *Hager*, 105/116, 31 S. E. 141. Opinion, conjecture, or surmise, inadmissibility of. *Frank*, 141/255, 287, 80 S. E. 1016.

Contradictory statement consisting partly of opinion, when excluded. *Jones*, 137/21, 72 S. E. 410.

Conversation, conclusion of witness, from language used by defendant in, not admissible. *Dennard*, 142/171, 82 S. E. 558. Opinion of witness, as to whom another referred by using "them" in conversation, not admissible. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Corporation, conclusion of witness, that it did a specified physical act, when not admissible. *Adams*, 142/498, 83 S. E. 131.

Credit, opinion as to whether extended to a certain person; or to another; admissibility of. *Reinschmidt*, 14 A. 409, 81 S. E. 252.

Damages, opinion as to amount of, when inadmissible. *City of Macon*, 115/156, 41 S. E. 499; *Foot & Davies Co.*, 115/985, 42 S. E. 413; *Georgia & Ry. Co.*, 143/313, 85 S. E. 197; *Ca. R. Co.*, 129/504, 59 S. E. 217; *McCray*, 119/876, 47 S. E. 341.

Conclusion or opinion of witness, as to fairness and correctness of amount claimed as, not admissible. *Butler*, 144/553, 87 S. E. 771.

To realty by cutting down street grade. Opinion that this helped the property, relevant. *Ficken*, 114/970, 41 S. E. 58.

Estimate of, from fire loss, as matter of opinion for jury. *Moss*, 144/173, 86 S. E. 550. Opinion of amount of unliquidated damages, jury not required to base finding on. *Bailey*, 147/450, 94 S. E. 554.

Deadly weapon, opinion that instrument examined is. *Perry*, 110/234, 36 S. E. 781. Opinion of non-expert, inadmissible to prove whether stick exhibited to jury was deadly weapon. *Moran*, 120/486, 48 S. E. 324.

Decedent, conclusion of witness incompetent, as to death, and who were heirs of. *Mobley*, 143/565, 85 S. E. 859. Expert and non-expert evidence, as to cause and manner of death, admissible. *Lanier*, 141/18, 80 S. E. 7.

Declaration here excluded as conclusion. *Ogletree*, 115/835, 42 S. E. 255.

Deed, opinion not admissible to show motive in making, or non-necessity for an additional church. *Huger*, 137/205, 73 S. E. 385. Opinion that deed was made in pursuance of court's order, not received. *Thompson*, 134/84, 67 S. E. 446.

Delivery; admissibility of consignor's testimony that he knew consignee received goods, for otherwise the carrier would have returned them. *Arnold*, 4 A. 58, 60 S. E. 815.

Of deed, testimony denying, not excluded as conclusion. *Hall*, 148/812, 816, 98 S. E. 549.

Denial of consent by witness, not objectionable as mere conclusion. *Chattahoochee Valley Ry. Co.*, 9 A. 84, 70 S. E. 683. Nor denial of authority as agent, by alleged agent. *Ib.*

Dependence on another for support, testimony as to, objectionable as a mere conclusion. *G. S. & F. Ry. Co.*, 17 A. 629, 87 S. E. 909. Not objectionable as mere conclusion, when. *Ga. Ry. & Co.*, 9 A. 107, 70 S. E. 607.

Differences of opinion not involving credibility or conflict as to facts. *Augusta So. R. Co.*, 7 A. 139, 66 S. E. 403.

Diligence; testimony that nothing more could have been done than was done, objectionable, as a mere conclusion.

Ga. R. Co., 125/88, 54 S. E. 76. Testimony that witness did everything it was possible to do to prevent injury, objectionable as. *Central Ry. Co.*, 121/782, 49 S. E. 780. Opinion of witness that he did everything he could have done to prevent engine from moving; harmless here. *Tenn. Coal & Iron Co.*, 11 A. 232, 75 S. E. 567.

Discretion of court in determining whether witness was expert, or prima facie an expert, not controlled unless manifestly abused. *Clary*, 8 A. 92, 68 S. E. 615.

Disease, opinion of non-expert witness that symptoms of, were alike, objectionable. Jury determines. *Turner*, 143/44, 84 S. E. 116.

Distance being more than ordinary step of person making an average step, statement as to, held objectionable as conclusion. *Seaboard Ry. Co.*, 123/612, 51 S. E. 591.

Driver's testimony that it was not his duty to inspect harness furnished to him was not opinion. *Portner Brewing Co.*, 120/20, 47 S. E. 631.

Dying declaration not objectionable as opinion. *Flannigan*, 135/221, 69 S. E. 171; *Washington*, 137/218, 73 S. E. 512.

That a named person "assassinated" the declarant, or killed him without provocation, not objectionable as a mere conclusion. *Owens*, 11 A. 419, 75 S. E. 519.

That the declarant was shot "for nothing," not objectionable as a mere conclusion. *Brown*, 8 A. 386, 69 S. E. 45.

Opinion not admitted as. *Ogletree*, 115/835, 42 S. E. 255.

Employer, opinion of, as to whether employee had good cause for quitting service. *Mobley*, 13 A. 730, 79 S. E. 906; *Durham*, 17 A. 810, 88 S. E. 594.

Engine, opinion of non-expert as to power of, not admissible. *International Harvester Co.*, 135/105, 68 S. E. 1093.

Error harmless in admitting opinion. *Kaigler*, 6 A. 329, 64 S. E. 1000; *Ar-*

Error—(Continued).

Atlantic Ry. Co., 128/293, 57 S. E. 493;
Williams, 145/177, 88 S. E. 958.

Harmless, in admitting mere opinion, where supported by other evidence. **Gales**, 14 A. 450, 81 S. E. 364.

In admitting conclusion, harmless, where sustained by undisputed testimony. **Central Ry. Co.**, 8 A. 2, 68 S. E. 775.

In admitting conclusion of witness, not ground for reversal here. **Small**, 20 A. 674, 93 S. E. 518.

In admitting opinion may not require reversal of ad interim injunction. **Southern Cotton Oil Co.**, 136/69, 70 S. E. 664.

None in excluding conclusion. **Central Ga. Transmission Co.**, 17 A. 55, 85 S. E. 498.

In admitting opinion, cured by positive testimony of the same witness. **Shedden**, 121/639, 49 S. E. 719.

Estate, conclusion that a certain person was "not a fit person" to manage. **Causey**, 22 A. 679, 97 S. E. 98.

Examination by expert, time for, before testifying, discretion of court as to allowing. **Herndon**, 111/179, 36 S. E. 634.

Exemption, that property was purchased with proceeds of, incompetent. **Dawson Grocery Co.**, 137/846, 74 S. E. 796.

Experiments by expert; details given. **Frank**, 141/244, 80 S. E. 1016.

Expert defined; one may be a medical expert without being a licensed physician. **Macon R. Co.**, 123/773, 778, 51 S. E. 569.

Inadmissible testimony to show that one was not. **Ford**, 14 A. 318, 80 S. E. 696. Expert evidence not received, where witness does not appear to be an expert as to the matter of inquiry. **Wheeler**, 112/44, 37 S. E. 126.

Not privileged to refuse to testify because not paid. **Dixon**, 12 A. 17, 76 S. E. 794.

Opinion of, rule as to when admissible. **Herndon**, 111/179, 36 S. E. 634; **Crankshaw**, 1 A. 364, 58 S. E. 222; **Boswell**, 114/43, 39 S. E. 897; **Mayor**

&c. of Milledgeville, 114/372, 40 S. E. 239. Competency and incompetency of, on facts recited. **W. & A. R. Co.**, 139/545, 77 S. E. 802. When may be disregarded. **Brown**, 106/518, 32 S. E. 601.

Eye-witnesses to physical fact, testimony of, may be accepted in preference to opinion of expert, based on measurements. **Southern Ry. Co.**, 131/21, 51 S. E. 913.

Facts, when all may be detailed so that jury may form correct conclusion, opinion not admissible. **Sumner**, 118/590, 45 S. E. 509; **Mayor &c. of Milledgeville**, 114/370, 40 S. E. 239; **Thomas**, 122/151, 50 S. E. 64; **Mayor &c. of Macon**, 122/800, 50 S. E. 986; **Central Ry. Co.**, 120/83, 47 S. E. 641, 1 Ann. Cas. 806; **Robinson**, 128/255, 57 S. E. 315; **McCray**, 134/417, 68 S. E. 62, 20 Ann. Cas. 101; **Auld**, 136/267, 71 S. E. 426, 37 L. R. A. (N. S.) 518; **Roberts**, 136/790, 72 S. E. 239; **Brunswick R. Co.**, 129/175, 58 S. E. 705; **Shiver**, 143/795, 85 S. E. 1031; **Milner**, 143/819, 85 S. E. 1045, L. R. A. 1916B, 977; **Pride**, 133/440, 66 S. E. 259; **Shaw**, 133/446, 66 S. E. 240. See **McMillan**, 133/761, 66 S. E. 943.

Fees of attorney, or of receiver, expert testimony as to amount of, when not controlling. **Brown**, 106/518, 32 S. E. 601.

Fight, opinion that the time had come for the accused "to either run or fight," not admitted. **Lowman**, 109/501, 34 S. E. 1019.

Financial condition of another, opinion as to, when admissible and when not. **Moore**, 128/91, 95, 57 S. E. 110.

Forgery of deposit ticket, expert testimony on issue of, what admissible. **Martin**, 137/285, 73 S. E. 387.

Friends; testimony that certain persons "made friends," with each other, a mere conclusion, without statement of facts on which based; not admissible. **Hill**, 18 A. 41, 88 S. E. 749.

Fraud or deception, conclusion of witness that he used none, not admissible. **Roberts**, 136/790, 72 S. E. 239.

Fruit, competency of expert evidence as to cause of decay in; not as to time reasonable for its transportation. *W. & A. R. Co.*, 139/545, 77 S. E. 802.

Gambling, statement that accused was, a mere conclusion. *Fleming*, 125/17, 53 S. E. 579.

Good faith; witness not allowed to state directly and without qualification that another acted in good faith and without notice. *Durrence*, 117/385, 43 S. E. 726. Party's testimony that he acted in good faith, was a statement of fact, not a mere conclusion. *Ga. Life Ins. Co.*, 12 A. 860, 78 S. E. 1115.

Guardianship, conclusion of witness as to fitness of applicant for, incompetent. *Churchill*, 132/666, 64 S. E. 691, 40 L. R. A. (N. S.) 875, Ann. Cas. 1913E: 1203.

Handwriting, expert testimony admissible, as to genuineness of decedent's signature. *Patton*, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

Competency of non-expert witness to prove. *Finch*, 147/147, 93 S. E. 89. See also *Bates*, 18 A. 718, 724, 90 S. E. 481; *Hawkins*, 18 A. 263, 89 S. E. 450; *Borders*, 18 A. 333, 89 S. E. 451.

Identification by expert and other evidence. *Burden*, 147/414, 94 S. E. 232.

Hearsay or deduction, opinion based on, objectionable. *Jones*, 137/638, 74 S. E. 59.

Opinion based on, not admissible, from one not testifying as expert. *Caswell*, 5 A. 483, 63 S. E. 566.

Hypothetical opinions of experts, admitted. *Atlantic Ry. Co.*, 128/296, 57 S. E. 493. Expert witness should be asked hypothetical question; not whether he has heard the evidence and what is his opinion therefrom. *Southern Bell Telephone Co.*, 139/567, 77 S. E. 382. Expert may be asked opinion of hypothetical case, though the facts be the same as those of the case on trial. *Seaboard Ry.*, 125/193, 54 S. E. 69, 114 Am. St. R. 196; *Central Ry. Co.*, 120/90, 47 S. E. 590.

"I am satisfied," not admissible. *Jones*, 137/638, 74 S. E. 59.

Identity, when proved by opinion. *Gray*, 6 A. 428, 432, 65 S. E. 191; *Lingerfelt*, 125/4, 53 S. E. 803, 5 Ann. Cas. 310.

Whether matter of opinion or of knowledge; question for jury. *Williams*, 15 A. 306, 82 S. E. 938.

Of accounts, testimony as to, not conclusion. *Lamar-Rankin Drug Co.*, 7 A. 567, 67 S. E. 703.

Impeachment by proving contradictory expression of opinion. *Bates*, 4 A. 486, 61 S. E. 888.

Impression of witness, when competent. *Marshall*, 136/543, 71 S. E. 893; *Mimbs*, 2 A. 387, 58 S. E. 499.

Indorsement, conclusion of witness that indorsement made draft absolutely the property of depository bank. *Baldwin Bank*, 144/181, 86 S. E. 538.

Insurance policy, inadmissibility of expert testimony in construing conditions of. *Life Insurance Co.*, 143/725, 85 S. E. 913. Conclusion as to whether one was insured, not admissible. *International Ins. Co.*, 11 A. 664, 75 S. E. 1058.

Inference of witness, in connection with predicate facts, when admissible. *Taylor*, 135/622, 70 S. E. 237; *Smith*, 14 A. 17, 80 S. E. 22.

Information as to ownership, conclusion based on, when not admissible. *Cornelia Planing Mill Co.*, 129/524, 59 S. E. 223.

Injured party's statement of condition of health, opinion, etc., weight of. *Fla. Cen. R. Co.*, 110/124, 128, 35 S. E. 283. Opinion of plaintiff, not competent, that his injury is permanent. *Central Ry. Co.*, 118/145, 44 S. E. 975. Opinion of expert witness not requisite to prove permanency of injury. *Southern Ry. Co.*, 124/959, 53 S. E. 461.

Insanity, opinion of expert as to. *Smith*, 127/56, 56 S. E. 116.

Admissibility of non-expert's testimony as to. *Brown*, 129/92, 58 S. E. 702; *Strickland*, 137/117, 72 S. E. 922.

Insanity—(Continued).

Not shown by opinion of non-expert. **Graham**, 102/650, 29 S. E. 582; **Lewis**, 106/362, 32 S. E. 342.

Opinion of non-expert as to, accompanied by reason, admissible. **Hubbard**, 148/238, 96 S. E. 327.

Non-expert may testify he knew accused and had seen nothing in his appearance or conduct to indicate insanity. **Herndon**, 111/178, 36 S. E. 634.

Weight of expert testimony as to. **Mitchell**, 6 A. 557, 65 S. E. 326.

Illegal question to expert on. **Flanagan**, 106/109, 32 S. E. 80.

General practitioner of medicine may testify as expert on, without special study of the subject. **Glover**, 129/726, 59 S. E. 816.

Insolvency, opinion as to. **Griffin**, 15 A. 529, 530, 83 S. E. 891; **Spence**, 20 A. 63, 92 S. E. 555.

Is a subject of opinion evidence. **Cabaniss**, 8 A. 130, 145, 68 S. E. 849.

Opinion as to, when without probative value. **Worthy**, 125/415, 54 S. E. 667. Proof of, by return of nulla bona as to administrator. *Ib.*

Opinion that hypothetical facts would constitute implied notice of, not admissible. **Hawes**, 124/568, 52 S. E. 922.

Instructions; opinion that they were followed. Better to show the instructions, and prove what was done with them. **Frey**, 112/242, 37 S. E. 376.

Intention of another, witness can not testify to, directly. **Durrence**, 117/389, 43 S. E. 726. Opinion of witness not expressed by testimony of what his intention was. **Alexander**, 118/26, 44 S. E. 851.

Intoxication, generally matter of opinion. **Teal**, 17 A. 556, 87 S. E. 830.

Investigation, opinion from, as to defendant's guilt, inadmissible. **Webb**, 6 A. 353, 64 S. E. 1001. Opinion as to identity. **Gray**, 6 A. 428, 432, 65 S. E. 191.

"It seems to me" was not opinion. **Mimbs**, 2 A. 387, 58 S. E. 499.

Jerk, admissibility of opinion that it was "unusual." **City Electric R. Co.**, 121/663, 49 S. E. 724.

Jeweler, opinion of, as to meaning of characters on pawn-ticket, admissible. **Wilensky**, 15 A. 360, 83 S. E. 276.

Judge's remark to counsel, before jury, that witness did not claim to be expert, held not error. **Glover**, 129/720, 59 S. E. 816. Nor remarks on sufficiency of preliminary testimony to qualify witness as expert. *Ib.* 727. Expert witness should not be questioned by judge in such way as to intimate opinion against his testimony. **City of Columbus**, 120/786, 48 S. E. 318.

Jury not bound by uncontradicted testimony as to opinion; former decisions discussed. **Haverty Furniture Co.**, 15 A. 620, 84 S. E. 138.

Kerosene, testimony that it was "ordinary" kerosene, not objectionable as mere opinion. **Standard Oil Co.**, 15 A. 587, 84 S. E. 69.

Knowledge of others, when witness can not testify to. **Bush**, 127/309, 56 S. E. 430, 9 Ann. Cas. 240.

Of decedent, witness not allowed to testify generally that fact was within. **Slaughter**, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Opinion of witness that proprietor of barroom did not know it was kept open, inadmissible. **Rooney**, 108/774, 33 S. E. 646.

Testimony that affiant knew contents of affidavit, objectionable. **Brewer**, 144/549, 87 S. E. 657. Whether one could or could not have known a fact, not admissible. **Southern Cotton Oil Co.**, 125/368, 54 S. E. 110.

Where witness testified that he knew footprints of accused and gave reasons and opportunity for knowing, opinion as to footprints, not rejected. **Jackson**, 148/519, 97 S. E. 525.

Law, opinion on question of, not of fact, not admissible. **Connor**, 7 A. 153, 66 S. E. 546. Opinion as to effect of law, or of custom or usage, not competent. **Farmers Ginnery Co.**, 144/599, 87 S. E. 804. Expert not allowed to state

a legal conclusion. *Trav. Ins. Co.*, 119/445, 46 S. E. 878.

Liquor, opinion that bottle contained, error in admitting, immaterial in view of other evidence. *Gales*, 14 A. 450, 81 S. E. 364.

Loss; testimony that paper "is lost," rejected as conclusion, when. *Underdonk*, 17 A. 419, 87 S. E. 680.

Lumber, opinion that it was going to ruin, inadmissible. *Hawkins*, 120/614, 619, 48 S. E. 169. Opinion of quantity of lumber loaded and unloaded, admissibility of testimony as to. *Ga. &c. Ry. Co.*, 133/136, 65 S. E. 381.

Machinery, opinion of witness familiar with, when admissible as to cause of sudden, automatic starting of like machinery. *Cochrell*, 5 A. 317, 325, 63 S. E. 244.

Market value, opinion of experts as to. *Armour*, 110/412, 35 S. E. 787.

Uncontradicted testimony of expert as to, not bind jury. *Atlantic R. Co.*, 125/483, 54 S. E. 530.

Opinion of non-expert witness, when received. *Miller*, 132/581, 64 S. E. 658.

Of land, competency of opinion testimony as to. *Central Georgia Power Co.*, 139/1, 76 S. E. 387, Ann. Cas. 1914A, 880.

Of undeveloped water-power not shown by opinion of what valuation should earn interest, assuming a market. *Flemister*, 140/512, 79 S. E. 143.

Opinion of, when competent. *Mayor &c. of Americus*, 3 A. 159, 59 S. E. 434.

Whether witness (owner) would take stated sum, admissible on cross-examination. *Siniard*, 145/541, 89 S. E. 517.

Materiality of paper, conclusion of witness as to, incompetent. *Central Ry. Co.*, 2 A. 428, 58 S. E. 674.

Mental capacity, to distinguish right from wrong, admissibility of opinion testimony as to. *Withrow*, 136/337, 71 S. E. 139.

Opinion of grantee that dead grantor was able to contract, not excluded. *Cato*, 112/139, 37 S. E. 183.

Opinion of non-expert witness, touching mental (testamentary) capacity. *Penn*, 144/67, 86 S. E. 233; *Whiddon*, 144/77, 86 S. E. 243. Conveyance by deed. *Hixon*, 144/408, 87 S. E. 475.

Opinion evidence as to mental condition admissible. *Credille*, 131/40, 61 S. E. 1042.

Opinion of non-expert, as to mental condition of testator, no error in permitting statement of opinion before giving facts on which it is based. *Simms*, 131/263, 62 S. E. 192.

Mill superintendent, opinion of, whether he left appliance in dangerous condition incompetent. *Holland*, 134/679, 68 S. E. 555, 19 Ann. Cas. 1032.

Necessity, opinion from, when admissible. *Shiver*, 143/791, 85 S. E. 1081.

Negligence, conclusion of witness as to, excluded. *Fowler-Flemister Co.*, 20 A. 200, 92 S. E. 1010. That deceased appeared to be a careless man, not competent. *Daughtry*, 1 A. 393, 58 S. E. 230. That plaintiff was not paying attention, excluded. *Georgia Ry. &c. Co.*, 137/720, 74 S. E. 244.

Newly discovered testimony as to expert's opinion did not require new trial. *Boyett*, 16 A. 153, 84 S. E. 613.

Non-expert's opinion, no error in excluding, here. *Bunn*, 18 A. 66, 88 S. E. 798.

Sufficient foundation for. *Withrow*, 136/337, 71 S. E. 139.

When not admitted. *Atlanta Con. St. R. Co.*, 107/157, 33 S. E. 191; *Atlanta Ice Co.*, 126/457, 55 S. E. 237; *Evans*, 124/318, 52 S. E. 538. When admissible. *Slaton*, 124/955, 53 S. E. 567; *Mosely*, 135/71, 68 S. E. 804; *Clary*, 8 A. 92, 68 S. E. 615.

Admissible, after giving facts on which based. *Ga. So. & Fla. Ry. Co.*, 5 A. 155, 62 S. E. 720; *Southern Ry. Co.*, 136/591, 71 S. E. 802.

Not admissible without basal facts. *Richmond Cotton Oil Co.*, 134/472, 67 S. E. 1126; *Owens*, 139/475, 77 S. E. 635; *Logan*, 139/589, 77 S. E. 809; *Graham*, 102/653, 29 S. E. 582; *Alabama &c. R. Co.*, 140/792, 79 S. E. 1113, Ann. Cas. 1915a, 1159.

Nuisance, that witness regarded pool as incompetent. *Godwin*, 120/747, 48 S. E. 139.

Expert and non-expert evidence as to effect of. *Manning*, 136/881, 72 S. E. 401.

Opinion that cottonseed house on railroad will be, not admissible. *Richmond Cotton Oil Co.*, 134/472, 67 S. E. 1126.

Oath, conclusion as to the taking of, by another, not sufficient evidence. *Johnson*, 13 A. 589, 79 S. E. 524.

Objection not made at trial, opinion sufficient proof to uphold verdict. *Hutchinson*, 8 A. 684, 70 S. E. 63. Statement that a place was a "public road," objection to, too late, when not made at trial. *Hutchinson*, 8 A. 684, 70 S. E. 63.

Observations or experiments made under conditions similar to those under which act in question occurred, admissibility of opinion from. *McClendon*, 7 A. 784, 68 S. E. 331.

Officer, conclusion of, that paper was warrant, not admissible. *Sherman*, 2 A. 148, 58 S. E. 393.

Opinion or conclusion of witness (no general custom shown), when not admissible. *City of Dalton*, 139/560, 77 S. E. 790.

Of expert and other witnesses, how proved. *Flanagan*, 106/110, 32 S. E. 80.

As to existence of fact, admission of, when no cause for new trial. *A. B & A. R. Co.*, 138/570, 75 S. E. 645.

Admissibility of. *Holcombe*, 5 A. 55, 56, 62 S. E. 647; *Southern Ry. Co.*, 6 A. 177, 64 S. E. 703. *Southern Mutual Ins. Co.*, 115/639, 42 S. E. 50; *Southern Mutual Ins. Co.*, 113/434, 437, 38 S. E. 964. As to distance, speed and time. *Augusta Ry. Co.*, 3 A. 513, 60 S. E. 213; *McClendon*, 7 A. 784, 68 S. E. 331; *Atlanta R. Co.*, 116/439, 42 S. E. 864.

As to identity of persons, handwriting, distances, sizes, sounds, etc., when admissible. *Shiver*, 143/795, 85 S. E. 1031.

Admissible in discretion of court when facts are not capable of being clearly detailed or described. *Hays*, 16 A. 20, 84 S. E. 497.

As to what would have been done if a certain thing had happened two days before act for which accused was on trial, rejected. *Delegal*, 109/518, 35 S. E. 105.

When testimony not excluded as. *County of Butts*, 135/27, 68 S. E. 786.

Of expert, rule as to when admissible. *Herndon*, 111/179, 36 S. E. 634; *Crankshaw*, 1 A. 364, 58 S. E. 222.

Of expert and non-expert witnesses, when receivable. *Alabama & C. R. Co.*, 140/792, 79 S. E. 1113, Ann. Cas. 1915A, 1159; *Miller*, 132/583, 64 S. E. 658; *Yates*, 127/813, 817, 56 S. E. 1017, 9 Ann. Cas. 620.

"Ordinary," use of this word not objectionable as mere opinion, when. *Standard Oil Co.*, 15 A. 587, 84 S. E. 69. **Ownership.** "I think Stanley owned the place of business; I so understood it;" not admissible; a mere opinion. *Brooks*, 19 A. 9, 90 S. E. 989. Testimony as to ownership of note, not excluded as mere conclusion. *Spiller-Beall Co.*, 18 A. 450, 89 S. E. 587. Statement of one in possession of personal property, as to ownership, or that a certain person had never owned it, not inadmissible, as being conclusion. *Brooks*, 10 A. 497, 73 S. E. 752.

Particulars, where witness gave, conclusion not excluded. *Eldorado Jewelry Co.*, 130/778, 61 S. E. 855.

Paternity; statement of man that he was father of child, whether objectionable as mere conclusion. *Kennedy*, 9 A. 223, 70 S. E. 986.

Payments and estimate of credits, no error in excluding conclusion of witness as to. *Bennett*, 148/66, 95 S. E. 690. Conclusion that payment by witness (prosecutor) was an "advance," not competent. *Fuller*, 2 A. 696, 59 S. E. 1.

Physician's opinion, jury not bound by. *Hall*, 16 A. 67, 80, 85 S. E. 600; *Boyet*, 16 A. 153, 84 S. E. 613; *Mitchell*, 6 A. 557, 65 S. E. 326. Competency, and

weight of. **Towaliga Falls Power Co.**, 6 A. 750, 759, 65 S. E. 844.

As to injury, weight of. **W. U. Tel. Co.**, 8 A. 519, 70 S. E. 65.

That death would soon follow wound, admissibility of. **Langston**, 10 A. 84, 72 S. E. 532.

That blow on head came from rear. **Perry**, 110/234, 36 S. E. 781.

That mental state was superinduced by physical injury, admissible. **Central Ry. Co.**, 118/143, 44 S. E. 975.

As to medical facts may be testified to, but not as to what was "a contributing cause" of an injury. **Trav. Ins. Co.**, 119/455, 46 S. E. 678.

As to kind of weapon used in wounding, admissible. **Fletcher**, 122/574, 50 S. E. 360.

As to how long accused will probably live, when irrelevant. **Bullard**, 127/289, 56 S. E. 429.

How to be formed and given. **Atlantic Ry. Co.**, 127/393, 56 S. E. 482, 11 L. R. A. (N. S.) 1119.

That an infected wound would be caused by a certain kind of bullet, when admissible. **Harper**, 129/770, 59 S. E. 792.

When not ruled out because based both on personal examination and report accompanied by sciagraph. **S. A. L. Ry.** 131/799, 63 S. E. 344.

As to why plaintiff absent from trial of damage suit, held irrelevant. **Southern Ry.** 132/812, 65 S. E. 131.

As to mental capacity to contract. **Hartley**, 138/736, 76 S. E. 39.

As to mental development after examination. **Jeffers**, 145/74, 88 S. E. 571. Opinion of one whose experience and studies qualified him to give an opinion as a medical expert, admitted, though he was not a licensed physician. **Macon R. Co.**, 123/773, 51 S. E. 569.

Possession, testimony that it was notorious, excluded as mere opinion. **Acme Brewing Co.**, 115/495, 501, 42 S. E. 8.

Opinion of witness as to taking of, objectionable. **Shingler**, 136/666, 70 S. E. 563.

Conclusion of witness as to, without facts on which based, inadmissible. **Howell**, 121/461, 49 S. E. 299; **Priester**, 135/694, 70 S. E. 646. Opinion of witness not expressed by statement that person was in actual possession of land. **Steinheimer**, 146/214, 91 S. E. 19. Whether testimony that one is in possession of land is conclusion; authorities conflicting. **Copeland**, 144/636, 87 S. E. 1034.

Probative value of expert evidence should be left to the jury. **Pritchett**, 116/757, 42 S. E. 1013. Though uncontradicted. **Atlantic Ry. Co.**, 125/483, 54 S. E. 91. When conclusion has none, though admitted without objection. **Harrington**, 6 A. 864, 65 S. E. 1064.

Public, opinion that places were, where notices posted, not admissible. **O'Neill Mfg. Co.**, 127/640, 56 S. E. 739.

Purpose for which note was delivered, opinion not expressed by witness testifying that it has ended. **Stiles**, 2 A. 317, 58 S. E. 515.

Qualification of witness as expert from experience. Weight of opinion is for jury. **Ala R. Co.**, 139/410, 77 S. E. 647, 45 L. R. A. (N. S.) 18.

Is a question for the court, depending on the facts stated; witness not disqualified from testifying as expert by disclaiming that he is expert. **Glover**, 129/718, 59 S. E. 816. Expert witness, when qualified and when not, as to water-power values, etc. **Flemister**, 140/511, 512, 79 S. E. 148.

Question seeking opinion of witness should not be so framed as to require him to review the testimony of others in the case. **Southern Mutual Ins. Co.**, 113/434, 437, 38 S. E. 964. Question calling for conclusion of witness, excluded. **Purvis**, 144/16, 85 S. E. 1012. Proper questions to expert. **Flanagan**, 106/110, 32 S. E. 80.

Railroad conductor, opinion of, as to what is sufficient time to get on or off train, admissible. **Seaboard Ry.**, 125/193, 54 S. E. 69, 114 Am. St. R. 196.

Railroad—(Continued).

Non-expert can not give opinion as to distance a train running at a given speed would knock a man, without giving facts on which based. *Central R. Co.*, 111/13, 36 S. E. 299.

Opinions of experts (as to feasibility of proposed change of location of railroad tracks, how it would affect cost of operation, the handling of business, etc.), admitted. *Atlantic Ry. Co.*, 128/293, 57 S. E. 493.

Testimony that railroad tracks were walked on a great deal, etc., not objectionable as conclusion. *Southern Ry. Co.*, 132/858, 64 S. E. 1083.

Conclusion of witness, as to relative danger of crossing railroad at different points, not admissible. *Savannah R. Co.*, 121/392, 49 S. E. 308.

Whether it was safe to go with satchel, etc., from one car to another of a rapidly moving train; question proper for conductor who had qualified as expert. *G. S. & F. Ry. Co.*, 17 A. 629, 87 S. E. 909.

Opinion of witness (engineer), that he was moving train at usual and necessary speed for coupling, admissible. *Goodwyn*, 2 A. 471, 58 S. E. 688.

Conclusion that the witness or another could not have done more than was done to stop a train, not admissible. *Ga. R. Co.*, 125/88, 54 S. E. 76; *Macon R. Co.*, 125/88, 54 S. E. 197.

Reason, where witness gives, by stating facts fully, opinion not objectionable. *City of Cedartown*, 2 A. 588, 59 S. E. 836.

Testimony that another "did not have any reason" for doing a certain thing was a mere conclusion, not proof. *Simmons*, 18 A. 65, 88 S. E. 800.

Testimony objectionable as opinion rejected for a different and wrong reason; rejection sustained by reviewing court. *Brunswick R. Co.*, 129/175, 58 S. E. 705.

Recollection of witness, that if a thing had occurred he "would have remember-

ed it," not a mere conclusion. *Jones*, 23 A. 726, 99 S. E. 388.

Sales and profits, opinion of agent touching, when no basis of computing damages. *American Chemical Co.*, 139/496, 77 S. E. 582. Opinion as to probable sales of a patented device; no error in charge of court as to. *Champion Mfg. Co.*, 16 A. 536, 85 S. E. 673. **Sanity**, opinion of non-expert witness as to, admissible, with facts on which based. *Goss*, 14 A. 402, 81 S. E. 247; *DeNieff*, 138/250, 75 S. E. 202.

Of party to suit, non-expert witness may testify as to. *Proctor*, 127/134, 56 S. E. 111.

Of testator, non-expert opinion as to. *Brown*, 129/92, 95, 58 S. E. 702. Witness to will may testify as to, without stating facts on which opinion based. *Scott*, 105/256, 31 S. E. 183.

Opinion as to, without probative value to rebut proof of insanity, here. *Wilson*, 9 A. 274, 70 S. E. 1128.

Non-expert may testify he knew accused and had seen nothing in his appearance or conduct to indicate insanity. *Herndon*, 111/178, 36 S. E. 634.

Opinion of expert, and of non-expert, as to, based on knowledge and observation, when competent. *Yates*, 127/813, 817, 56 S. E. 1017, 9 Ann. Cas 620.

Sequestration, expert witness not exempted from rule of. Proper practice as to examining. *Atlantic Ry. Co.*, 127/393, 56 S. E. 482, 11 L. R. A. (N. S.) 1119.

Sewage, opinion of non-expert witness, as to effect of continued discharge of, when admissible. *Manning*, 136/881, 72 S. E. 401.

Sheriff, opinion of, as to jury basing verdict on evidence, etc., not admissible. *Bivins*, 144/340, 87 S. E. 285.

Shot fired from a gun, opinion as to whether it would have struck a person if in a certain position; admissibility of. *Deal*, 18 A. 70, 88 S. E. 902. Statement not objectionable as conclusion that other person shot without cause. *McMillan*, 128/25, 57 S. E. 309.

Signature, opinion as to genuineness of, by comparison of handwriting. *Patton*, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

To lost paper, opinion not admissible as to genuineness or falsity of. *Finch*, 752, 48 S. E. 115.

Non-expert witness, when competent as to genuineness of falsity of. *Finch*, 147/147, 93 S. E. 89.

Slanderous language, witness may give inferences in testifying as to. *Proctor*, 127/134, 56 S. E. 111.

Smell of a certain acid, one familiar with, allowed to testify that a certain article had that smell, over objection that he was not an expert. *Green*, 125/742, 54 S. E. 724.

Solvency or insolvency is a subject of opinion evidence. *Cabaniss*, 8 A. 130, 145, 68 S. E. 68 S. E. 849; *Griffin*, 15 A. 529, 530, 83 S. E. 891. Opinion of witness as to his own solvency, admissible when accompanied by facts as foundation. *Kirkman*, 145/452, 89 S. E. 411.

Speed, opinions as to rate of. *Augusta Ry. Co.*, 3 A. 513, 60 S. E. 213; *Lamb*, 20 A. 250, 92 S. E. 1011; *Ga. &c. Co.* 20 A. 465, 466, 93 S. E. 62.

Non-expert opinion as to, admissibility of. *Fisher Motor Car Co.*, 9 A. 465, 71 S. E. 764. Opinion of non-expert as to speed of car, of less value than the physical facts. *McEwen*, 120/1003, 48 S. E. 391.

Statement of fact is not conclusion. *Portner Brewing Co.*, 120/20, 47 S. E. 631.

Street grade, opinion of witness not admissible as to damage or benefit by cutting down. *Ficken*, 114/970, 41 S. E. 58. Statement that a place was a "public street," whether objectionable as. *Stringfield*, 4 A. 843, 62 S. E. 569.

Street-car, expert testimony as to means and time for stopping. *Atlanta Ry. Co.*, 118/449, 45 S. E. 494.

Superintendent of defendant company, opinion of witness not admissible that person named was. *Georgia Steel Co.*, 136/492, 71 S. E. 890.

V. II—52.

Support, testimony objectionable as conclusion, that a certain person was "dependent" on another for. *G. S. & F. Ry. Co.*, 17 A. 629, 87 S. E. 909. That the witness was dependent on her son for support, not objectionable as mere conclusion. *Ga. Ry. &c. Co.*, 9 A. 107, 70 S. E. 607.

Supposition of witness not ordinarily admissible; but may be admissible in explanation of conduct. *Central Ry. Co.*, 135/206, 69 S. E. 165, 31 L. R. A. (N. S.) 813, 21 Ann. Cas. 1077.

Of mill superintendent, that named person acted as manager, not competent. *Holland*, 134/679, 88 S. E. 555, 19 Ann. Cas. 1032.

Suretyship not shown by mere opinion of a party. *Duckett*, 23 A. 630, 99 S. E. 151.

Surveyor, opinion of, and reason for it, that land surveyed is vacant, i. e., ungranted. *Pritchett*, 102/21, 29 S. E. 210.

Tax return, testimony of what included by, not conclusion. *Jasper*, 147/672, 95 S. E. 254.

Technical terms of trade, meaning of, shown by expert witness. *Daniel*, 124/1063, 53 S. E. 573.

Telegraphic order in regard to running of train, expert testimony as to meaning of, when not admitted. *Elliott*, 113/303, 38 S. E. 821.

Testator, influence of mother of, opinion as to, accompanied by facts on which based, admissible. *Gordon*, 141/347, 80 S. E. 1007.

Opinion of reasonableness of testamentary disposition of property, not competent. *Owen*, 145/287, 88 S. E. 964.

Admissibility of opinion of non-expert as to testamentary capacity. *Mosley*, 135/71, 68 S. E. 804.

Opinion of testatrix's state of mind toward an individual, not competent. *Christian*, 145/284, 88 S. E. 986.

Time, opinions as to lapse of. *Augusta Ry. Co.*, 3 A. 513, 60 S. E. 213.

As to reasonable time for removing timber, estimates of quantity, etc. *Howell*, 139/441, 442, 77 S. E. 564.

Length of, between given events, opinion as to, and as to what is a reasonable time, admissibility of. *Allison*, 121/822, 49 S. E. 831.

Timber cutting, opinion that damages from would be irreparable, when objectionable. *Logan*, 135/367, 69 S. E. 548.

Title to personal property, statement as to, when not objectionable as conclusion of witness. *Brooks*, 10 A. 497, 73 S. E. 752. Conclusion of witness, insufficient to show title. *Swann Davis Co.*, 7 A. 672, 673, 67 S. E. 888.

Trust, on issue of fitness of person for, opinion of witness not admissible, where all facts capable of detailed description. *Churchill*, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

Understanding of witness, when not sufficient as basis for verdict. *Collins*, 119/40, 45 S. E. 718; *Equitable Mortgage Co.*, 119/282, 46 S. E. 440.

Of language heard by witness, not permissible for him to give. *Frank*, 141/255, 287, 80 S. E. 1016.

Value, admissibility of opinion as to. *Allison*, 121/827, 49 S. E. 831; *Crump*, 18 A. 437, 88 S. E. 798; *Morris Storage Co.*, 1 A. 752, 58 S. E. 232; *Lan-drum*, 8 A. 209, 68 S. E. 826. Shown by hearsay. *Ib.* How proved; cost use, etc., opinions tending to show. *Morrow Transfer Co.*, 8 A. 409, 69 S. E. 317.

Of land, admissibility of expert and opinion evidence as to. *Central Georgia Power Co.*, 139/1, 76 S. E. 387, Ann. Cas. 1914A, 880; *Central Ga. Power Co.*, 139/416, 77 S. E. 565. Things considered as basis. Matters affecting credibility. *Central Ga. Power Co.*, 139/416, 77 S. E. 565.

Testimony as to, involves opinion. Rule of admissibility. *Southern Cotton Oil Co.*, 136/69, 70 S. E. 664.

Is matter of opinion. *Reidsville &c. R. Co.*, 13 A. 366, 79 S. E. 187. A matter of opinion, and may be proved

by circumstances. *W. & A. R. Co.*, 15 A. 370, 83 S. E. 445.

Testimony of one who thought property was worth a stated sum in the fall, admissible on issue as to its value in the early part of next year. *Moon*, 12 A. 660, 78 S. E. 141. Positive evidence as to value, not met by testimony here. *Ib.*

Of property on improved street, opinion of witness as to enhancement of, when excluded. *City of Atlanta*, 142/324, 82 S. E. 899.

Opinion as to difference in rental value of store with a glass front and without it, admitted, though it was not shown that the witnesses were "expert real-estate men." *Farkas*, 19 A. 472, 91 S. E. 892. Of services, opinion as to. *City Electric R. Co.*, 121/663, 49 S. E. 724. Any witness may give opinion as to value of services after giving facts on which based. *G. S. & F. Ry. Co.*, 5 A. 155, 62 S. E. 720. Opinion of witnesses as to value of services, admissible, but jury not bound thereby. *Marshall*, 1 A. 485, 57 S. E. 1006.

Opportunity of forming opinion of, as basis of competency. *Central Georgia Power Co.*, 139/1, 76 S. E. 387, Ann. Cas. 1911A, 880.

Of land, opinion of, and estimate of consequential damages, what not admissible. *Central Georgia Power Co.*, 143/10, 84 S. E. 67.

Opinion of non-expert witness as to, based on facts testified to, admissible. *Georgia &c. Ry. Co.*, 143/313, 85 S. E. 197.

Jury not bound by opinion of witnesses as to. *Strickland*, 12 A. 641, 77 S. E. 1070; *Minchew*, 5 A. 154, 62 S. E. 716; *Griffin*, 15 A. 530, 83 S. E. 891; *Great American Fire Asso.*, 11 A. 785, 787, 76 S. E. 159. Though uncontradicted. *Atlantic Ry. Co.*, 125/483, 54 S. E. 91; *Westberry*, 19 A. 529, 91 S. E. 930. So as to value of professional services. *Baker*, 105/225, 31 S. E. 426. As to value of land for rent. *Bonds*, 133/451, 66 S. E. 156; *McCar-*

thy, 137/282, 73 S. E. 493; *Graham*, 137/668, 74 S. E. 426. As to value of services. *Jennings*, 127/779, 56 S. E. 1026; *Georgia Ry. &c. Co.*, 138/603, 75 S. E. 664. As to value of stock of merchandise, accounts, etc. *Martin*, 135/162, 68 S. E. 1095.

Is matter of opinion; jury not bound by uncontradicted testimony as to; error to direct verdict. *Johnson*, 19 A. 192, 91 S. E. 220. So as to value of goods. *Southern Ry. Co.*, 139/362, 72 S. E. 44. As to value of mesne profits. *Hammock*, 146/681, 92 S. E. 57.

Testimony that the witness lost \$50, the value of his cows sold by another, was not a mere conclusion, and showed loss. *Farmer*, 18 A. 307, 89 S. E. 382.

Rule that jury is not bound by opinion of witness as to, not applied where one testified to knowledge of market value at a given time and place. *McNamara*, 10 A. 669, 73 S. E. 1092.

Verdict not properly based on conclusion of witness. *Culpepper*, 142/164, 82 S. E. 549. When opinion no basis for finding. *Johnson*, 126/719, 56 S. E. 80.

Weight of opinion, for jury. *Ala. R. Co.*, 139/410, 77 S. E. 647, 45 L. R. A. (N. S.) 18; *Atl. R. Co.*, 132/193, 63 S. E. 834.

Of expert testimony, for jury. *Wall*, 112/336, 37 S. E. 371; *Southern Ry. Co.*, 7 A. 659, 67 S. E. 886; *McClendon*, 7 A. 784, 68 S. E. 331; *Mitchell*, 6 A. 554, 65 S. E. 326; *Towaliga Walls Power Co.*, 6 A. 750, 759, 65 S. E. 844; *Rouse*, 135/227, 69 S. E. 180; *Clary*, 8 A. 93, 68 S. E. 615.

Of opinion of physician. *Southern Ry. Co.*, 7 A. 659, 67 S. E. 886; *W. U. Tel. Co.*, 8 A. 519, 70 S. E. 65.

Conclusion, merely, of witness, of no weight. *Farmer*, 118/289, 45 S. E. 244; *Charleston R. Co.*, 118/704, 45 S. E. 644. Opinion without evidentiary value here. *Walters*, 6 A. 566, 65 S. E. 357.

Of expert testimony, instructions as to. *Carroll*, 113/720, 39 S. E. 285. Comparative value of expert and non-expert testimony, for jury. *Fisher Motor Car Co.*, 9 A. 465, 71 S. E. 764. Whisky, statement as to seeing persons with, not subject to objection as a mere conclusion. *Quinn*, 22 A. 633, 97 S. E. 84.

That certain barrels, etc., contained, not objectionable as mere conclusion. *Borders*, 18 A. 333, 89 S. E. 451.

Testimony that liquid looked like whisky, admitted. *Brooks*, 19 A. 9, 90 S. E. 989; *Borders*, 18 A. 333, 89 S. E. 451.

Will, conclusion of witness, dependent on construction of, no error in excluding. *Hunt*, 140/158, 78 S. E. 805.

Opinion of non-expert witness, competency of, on issue as to probate of. *Slaughter*, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Opinion as to capacity to make intelligent disposal of property by, whether admissible. *Whiddon*, 144/77, 86 S. E. 243; *Penn.*, 144/67, 86 S. E. 233. Opinion of non-expert, whether decedent had capacity to talk and dictate a will, when admissible. *Credille*, 131/40, 61 S. E. 1042.

Words used, opinion that they "had the worst kind of effect," inadmissible. *Shuler*, 126/630, 55 S. E. 496.

Work. That witness cannot work as much as he did before injury, not a conclusion. *Southern Ry. Co.*, 128/366, 57 S. E. 702.

Opinion that work done at instance of A was for B, when without probative value. *Jordan*, 7 A. 68, 66 S. E. 279.

Opinion of witness not expert, as to whether work was done in a proper manner, not admissible. *Brush Co.*, 103/512, 30 S. E. 533.

Wound, that it was impossible for defendant to have inflicted, on himself, excluded, as a mere conclusion. *Miller*, 18 A. 487, 89 S. E. 607.

Opinion of non-expert witness, that wound was from pistol-shot, and that

shot sounded like pistol, received. **Ray**, 142/655, 83 S. E. 518.

Opinion of witness, that wound was made by discharge of shell of a kind shown, when admissible. **Byrd**, 142/633, 83 S. E. 513, L. R. A. 1915B, 1143.

Opinion that wounds in front and in back were not made by same shot, admissibility of. **Nunn**, 143/451, 85 S. E. 346.

Non-expert witness may state his inference from bullet-wounds described by him. **Nunn**, 143/451, 85 S. E. 346.

Testimony that the described location of a fatal wound indicated the position of the deceased, when shot, admitted; not material error. **Rivers**, 10 A. 487, 73 S. E. 610.

Writing, opinion of genuineness of. **Martin**, 142/807, 83 S. E. 958.

7. HEARSAY EVIDENCE.

Accomplice. See Evidence, 1, catchword "Accomplice."

Account not proved by witness stating that his only knowledge as to correctness of items was derived from books of account. **Case Threshing Machine Co.**, 23 A. 46, 97 S. E. 443.

Accused's sayings, testimony of, and of his wife's act on receiving note from him, was not hearsay. **Bexley**, 141/1, 80 S. E. 314.

Acts and sayings of codefendant, tending to disprove his answer and support plaintiff's allegations, when competent. **Moss**, 144/194, 86 S. E. 548.

Admission not objectionable as hearsay. **Central R. Co.**, 112/916, 38 S. E. 350.
Hearsay not received, on criminal trial, as admissions of party to case. Prosecutor is not such party. **Bridges**, 110/246, 34 S. E. 1037.

Age, witness may give his own, on information from his mother, who lives in the county of the trial. **McCollum**, 119/308, 46 S. E. 413, 100 Am. St. R. 171.

Admissibility of Bible. **Davis**, 137/451, 73 S. E. 579.

Agent's declarations, not made dum ver-
vet opus or as part of res gestæ, dis-
regarded in reviewing case. **Miller**,
126/746, 55 S. E. 952. Agency not
proved by declarations of alleged
agent. See Evidence, 1; catchword,
Agency.

Birth provable by family repute. **Lake**,
137/159, 73 S. E. 345, 38 L. R. A.
(N. S.) 559.

Boundaries, establishment of, by tradi-
tionary reputation in neighborhood.
Present day reputation not admissible.
McAfee, 144/473, 87 S. E. 392.

Character not assailable by hearsay tes-
timony. **Milner**, 143/816, 85 S. E.
1045, L. R. A. 1916B, 977. Reputa-
tion for peaceable or violent charac-
ter. **Powell**, 101/10, 29 S. E. 309.
Hearsay admissible on issue raised by
evidence of good character of accused.
Frank, 141/245, 274, 80 S. E. 1016.

Complaints, admissibility of, in action for
personal injury; testimony that plain-
tiff "complained" and said she had
received a jolt, admitted. **W. & A. R.
Co.**, 123/29, 50 S. E. 984.

That the plaintiff complained "im-
mediately" after the accident, too in-
definite as to time. **Pool**, 123/205, 51
S. E. 328.

Of pain by plaintiff, not admissible.
W. & A. R. Co., 144/250, 86 S. E.
933.

Of pain and suffering, made to phy-
sician, by one suing for personal in-
juries, when excluded as hearsay. **At-
lanta R. Co.**, 122/83, 49 S. E. 818.

Condition subsequent in deed, hearsay
not admissible to show failure to per-
form. **Groover**, 145/714, 89 S. E. 761.

Conduct or motive, statements explain-
ing, admissible, when. **Carwell**, 7 A.
200, 66 S. E. 488; **Smith**, 7 A. 253,
66 S. E. 556; **Burgamy**, 22 A. 724,
97 S. E. 199; **Leake**, 5 A. 102, 62 S.
E. 729; **Third National Bank**, 19 A.
208, 211, 91 S. E. 346; **Stafford**, 121/
169, 48 S. E. 903.

Explanation of, but hearsay on main issue; when no error in rejecting testimony. *Hill*, 147/733, 95 S. E. 232; cf. *Moss*, 147/311, 93 S. E. 875.

Explanation of, induced by what party was told, held admissible. *Moss*, 147/311, 93 S. E. 875. *Contra*, *Hill*, 147/733, 95 S. E. 232.

Explanation of, hearsay admissible as. But not as affirmative proof. *Cody*, 124/446, 52 S. E. 750. Hearsay, inadmissible, not prejudicial; explaining prosecutor's course of conduct. *Hamilton*, 143/265, 84 S. E. 583. Hearsay not applied to words constituting conduct. *Fitzgerald*, 10 A. 71, 75, 72 S. E. 541.

Witness allowed to explain, by repeating what was said to her as to another person. *Coppedge*, 22 A. 631, 96 S. E. 1046.

Conductor's remark as to injury to flagman of train, not admissible. *Central Ry. Co.*, 141/645, 81 S. E. 900.

Conspirator, acts and declarations of. See *Evidence*, 1, catchword "Conspiracy."

Conversation overheard. *Ford*, 124/793, 53 S. E. 335.

Coroner's inquest, substance of testimony at, was not inadmissible as hearsay. *Darby*, 144/759, 87 S. E. 1067.

Crime, hearsay no basis to convict of. *Hanjara*, 6 A. 576, 65 S. E. 356. Hearsay not sufficient to convict of, unless there is a principal fact established by other evidence. *Williams*, 11 A. 662, 75 S. E. 998.

Complaint of, hearsay. *Webb*, 7 A. 37, 66 S. E. 27; *Huey*, 7 A. 398, 66 S. E. 1023.

Cross-examination, hearsay on. *Hunter*, 133/79, 65 S. E. 154.

Death, when shown by hearsay. *Piedmont Hotel Co.*, 9 A. 673, 684, 27 S. E. 51.

Certificate, as to cause of death, excluded. *Supreme Council*, 23 A. 104, 97 S. E. 557. Hearsay not admissible to prove death and heirship; witness not being member of decedent's family. *Mobley*, 143/565, 85 S. E. 859.

Deceased, declarations by, against interest, are exceptions to rule against admit-

ting hearsay. *Massee-Felton Lumber Co.*, 122/299, 50 S. E. 92.

Declaration of, after second marriage, that first wife was living, hearsay. *Whigby*, 135/584, 69 S. E. 1114.

Declarations of, in his interest, not *res gestæ*. Aliter as to his declarations (*res gestæ*) disaffirming marriage, showing character of cohabitation. *Drawdy*, 130/161, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Declaration of deceased grantor in favor of grantee, when inadmissible. *Hollis*, 103/75, 29 S. E. 482.

When proof of statements of deceased attesting witness not excluded as hearsay. *Mobley*, 134/125, 131, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1104.

Statement of deceased contractor, not in plaintiff's presence, that he owed plaintiff nothing, etc., hearsay. *Belcher*, 135/73, 68 S. E. 839.

Declarations of deceased vendor, when not received. *Daniel*, 106/92, 31 S. E. 734.

Statement of slain officer, of what was understood between him and accused, when not competent. *Yates*, 127/813, 56 S. E. 1017, 9 Ann. Cas. 620. Hearsay, of deceased officer's statements, not admissible. *Ray*, 148/204, 96 S. E. 209.

Statement of, before homicide, not admissible. *Roberts*, 145/79, 88 S. E. 559.

Exception to hearsay rule, in case to self-disserving declaration of decedent. *Murdock*, 12 A. 276, 77 S. E. 181.

What plaintiff said to defendant as of self-disserving declaration of decedent whose homicide was the cause of action, error in admitting, immaterial here. *Murdock*, 12 A. 276, 77 S. E. 181.

Deed returned by grantee (wife), hearsay relating to, not admissible. *Marchant*, 147/38, 92 S. E. 863.

Dying declarations. *Hall*, 124/649, 52 S. E. 891. See 2, p. 1657, ante.

Engine, hearsay concerning horse-power of, not admissible. *International Harvester Co.*, 135/105, 68 S. E. 1093.

Error in admitting hearsay. *Lunceford*, 17 A. 730, 88 S. E. 212; *Bloodworth*, 12 A. 60, 77 S. E. 1131; *Strickland*, 8 A. 421, 69 S. E. 313.

Prejudicial, in admitting. *Smith*, 13 A. 837, 80 S. E. 1051; *Armstrong*, 106/509, 32 S. E. 590.

In admitting, whether sufficient to require reversal. *Grubbs*, 16 A. 503, 85 S. E. 678.

In admitting, immaterial. *Maddox*, 18 A. 614, 89 S. E. 1090; *Freeman*, 18 A. 696, 90 S. E. 368.

Excluded. *Pittman*, 22 A. 255, 95 S. E. 940; *Crawford*, 20 A. 577, 93 S. E. 173; *Folsom*, 14 A. 245, 80 S. E. 677; *Webb*, 6 A. 353, 64 S. E. 1001; *Foss*, 15 A. 478, 83 S. E. 880; *Amerson*, 18 A. 177, 88 S. E. 998; *King*, 18 A. 280, 89 S. E. 451; *Perdue*, 135/273, 69 S. E. 184.

Explanation of false testimony formerly given by witness, receivable; its sufficiency for jury. *Chandler*, 124/821, 53 S. E. 91.

Grantor, sayings and affidavit of, that he never made deed, not admissible. *Byrd*, 108/2, 33 S. E. 688. That grantor told witness to deed, not in grantee's presence, that it was without money consideration, inadmissible. *Pierce*, 120/536, 48 S. E. 128.

Harmless error in admitting hearsay. *Garnett*, 10 A. 114, 72 S. E. 951; *Hubbard*, 10 A. 488, 73 S. E. 855; *South Ga. R. Co.*, 131/599, 62 S. E. 1042; *Smith*, 16 A. 691, 85 S. E. 973; *Koch*, 17 A. 455, 87 S. E. 697; *Hall*, 12 A. 803, 78 S. E. 481. Harmless, in view of other evidence to the same effect. *Cannon*, 125/787, 54 S. E. 692; *Citizens National L. Ins. Co.*, 13 A. 30, 78 S. E. 683. As to matter not disputed in evidence. *American Mills Co.*, 20 A. 34, 92 S. E. 760.

Husband of defendant, under whom she claimed, hearsay evidence of statement by, when not admissible. *Shingler*, 135/666, 70 S. E. 563. Hearsay, in-

admissible, that murdered husband suspected illicit relations of wife. *Thomas*, 143/268, 84 S. E. 587.

Identity, testimony as to. Bertillon measurements by another, objectionable as hearsay here. *Oliver*, 7 A. 696, 67 S. E. 886. Hearsay, to identify and locate objects, or to explain conduct; rule as to admissibility. *Stamps*, 8 A. 231, 68 S. E. 947.

Impeachment of witness, hearsay not admissible for. *Duggan*, 124/438, 52 S. E. 748.

Information, competent to show giving of, not for purpose of proving main fact. *Purvis*, 145/517, 89 S. E. 571. Hearsay as to what witnesses were informed. *Richmond Cotton Oil Co.*, 134/472, 67 S. E. 1126; *Green*, 134/483, 68 S. E. 77.

Which witness acted on, when admissible as explanation. *Celeman*, 127/282, 56 S. E. 417.

As to death, not admissible. *Irwin*, 144/532, 87 S. E. 674.

From one car-conductor to successor, not treated as hearsay. *Purvis*, 145/517, 89 S. E. 571.

Injunction, error to receive hearsay affidavits at hearing of. *Lyon*, 102/453, 31 S. E. 34. Admission of hearsay may not require reversal of ad interim injunction. *Southern Cotton Oil Co.*, 136/69, 70 S. E. 664.

Inspections and rejections of cross-ties when report of, was hearsay. *Moultrie Co.*, 122/26, 49 S. E. 729.

Joint defendants, testimony as to admissions of one of, rejected as hearsay as to the other. *Graham*, 14 A. 287, 80 S. E. 693.

Judge's examination of witness, eliciting hearsay testimony, no cause for reversal where no objection. *Brown*, 144/303, 87 S. E. 295.

Knowledge derived solely from books of account, when not competent. *Linder*, 1 A. 60, 57 S. E. 975.

Hearsay as additional source of, will not prevent admission of testimony personally known to witness. *At. Ry.*, 1 A. 302, 58 S. E. 258.

- Testimony not affirmatively appearing to be hearsay, not excluded as such, where it might rest on personal knowledge. *Flint River R. Co.*, 10 A. 574, 73 S. E. 957.
- Landmarks**, no material error in admitting hearsay as to location of, where fact of trespass admitted. *Crockett*, 3 A. 554, 60 S. E. 326.
- Letters**, information from, as to possession and title. *Frank*, 144/270, 87 S. E. 3.
- From sales agent to manufacturer, not binding on buyer. *Aripeka Saw Mills*, 143/210, 84 S. E. 455.
- Of one of former counsel, deceased, statements in, not admissible. *Carrie*, 145/184, 88 S. E. 949.
- That witness received letter from clerk as to investigation of records, not admissible. *Gorham*, 137/134, 72 S. E. 893.
- Testimony not shown to be hearsay, as basis for admitting letter. *Woodruff*, 21 A. 666, 94 S. E. 809.
- Hearsay derived from, not received. *Coker*, 112/71, 37 S. E. 122.
- Limited purpose**, admission of hearsay statements for, when no error requiring new trial. *Hixon*, 130/479, 61 S. E. 14; *Abercrombie*, 130/680, 61 S. E. 532.
- Main issue**, no error in excluding hearsay on, though admissible otherwise. *Hill*, 147/733, 95 S. E. 232.
- Malicious prosecution**, testimony of plaintiff in suit for, was not objectionable as hearsay. *Southern Ry. Co.*, 139/460, 77 S. E. 637.
- Market value**, hearsay admissible as to. *Brooke*, 19 A. 21, 90 S. E. 1037. Testimony touching market prices not objectionable as hearsay, in this case. *Erk*, 137/608, 73 S. E. 1065.
- Married man**, hearsay that one claims to be: *Tison*, 125/7, 53 S. E. 809.
- Mental condition** of brother of testatrix, hearsay as to, incompetent. *Owen*, 145/287, 88 S. E. 964.
- Motive or conduct**, hearsay admitted to explain. *Third National Bank*, 19 A. 208, 211, 91 S. E. 346; *A. C. L. R. Co.*, 8 A. 197, 68 S. E. 875; *Carswell*, 7 A. 200, 66 S. E. 488; *Smith*, 7 A. 253, 66 S. E. 556.
- Explanation of; harmless error in repelling hearsay testimony. *Hill*, 147/733, 95 S. E. 232; cf. *Moss*, 147/311, 93 S. E. 875.
- Newly discovered hearsay evidence**, inadmissible. *Taylor*, 132/235, 63 S. E. 1116.
- Newspaper articles** objectionable as hearsay. *Falls City Co.*, 130/560, 61 S. E. 230.
- New trial** not granted for receiving hearsay, when fact admitted which it was offered to prove. *Franklin L. Co.*, 133/557, 66 S. E. 264.
- Reception of hearsay, no cause for, when. *W. & A. R. Co.*, 144/250, 86 S. E. 933; *Irwin*, 144/532, 87 S. E. 674. See *Brown*, 144/303, 87 S. E. 295; *Askew*, 147/613, 95 S. E. 5.
- Required, where hearsay admitted over objection. *Foster*, 119/675, 46 S. E. 840. Required, where other evidence not conclusive. *Stewart*, 138/797, 76 S. E. 352.
- Objection to admission of hearsay**, too late, when. *Wright*, 6 A. 770, 65 S. E. 806.
- Opinions of experts** receivable. *Boswell*, 114/43, 39 S. E. 897. Hearsay, without probative value as basis for opinion of non-expert. *Caswell*, 5 A. 483, 63 S. E. 566.
- Ordinance**, statement of clerk as to absence of, from record, etc., objectionable as hearsay. *Sterling*, 137/177, 73 S. E. 374.
- Ownership**, etc., testimony as to what the witness "found," in regard to, rejected as hearsay. *Cornelia Planing Mill Co.*, 129/524, 59 S. E. 232. Hearsay not admissible, that witness heard land spoken of as named person's property. *Heatle*, 135/154, 68 S. E. 783; *Shingler*, 135/666, 70 S. E. 563. Hearsay admissible to negative theory that one person did not recognize another as owner of land. *Groover*, 148/798, 98 S. E. 503.

Party eliciting hearsay, not allowed to exclude it, though inadmissible over objection. *Humphreys*, 133/457, 66 S. E. 158.

Pedigree not proved by sayings of decedents declaring the relationship now to be proved. *Terry*, 142/224, 82 S. E. 566.

Admissibility of sayings of decedent as to. *Malone*, 113/791, 39 S. E. 507, 84 Am. St. R. 259; *Greene*, 111/735, 36 S. E. 957; *Mobley*, 144/327, 87 S. E. 24. Cf. *Estill*, 149/384, 100 S. E. 365. And see catchword "Relationship," *infra*

Testimony as to, derived in part from court documents, when not admissible. *Mobley*, 144/327, 87 S. E. 24.

What necessary to admit hearsay as to matters of. *lb*; *Lanier*, 123/626, 632, 51 S. E. 623.

Proof of by statements of deceased relatives, exception to hearsay rule. *Terry*, 142/226, 82 S. E. 566.

Physical symptoms, indications of, not objectionable as hearsay. *Georgia Ry. & Co.*, 133/621, 66 S. E. 944.

Physician, statement of plaintiff to, when not admissible. *Goodwyn*, 2 A. 470, 58 S. E. 688.

Testimony of, based on statistics and consensus of opinion of specialists, not excluded as. *W. U. Tel. Co.*, 10 A. 606, 620, 74 S. E. 70.

Inability of, to give relief, patient's testimony as to, not objectionable as hearsay. *Brunswick R. Co.*, 129/175, 58 S. E. 705.

Pistol, hearsay that it was not loaded, not admissible. *Jones*, 139/104, 76 S. E. 748.

Place where injury occurred, hearsay as to, when admissible. *Stamps*, 8 A. 229, 68 S. E. 947.

Possession claimed as heir, hearsay that it was permissive rather than adverse, not admissible. *Causey*, 143/8, 84 S. E. 58.

Prima facie case not disproved by hearsay statements. *Kemp*, 122/559, 50 S. E. 465.

Probative value, hearsay has none, though admitted without objection.

Rabun, 21 A. 43, 93 S. E. 524; *A. C. L. R. Co.*, 10 A. 314, 73 S. E. 594; *Michigan Mutual L. Ins. Co.*, 10 A. 697, 73 S. E. 1096; *Ford*, 4 A. 468, 61 S. E. 881; *Fain*, 4 A. 718, 62 S. E. 466; *Davis*, 4 A. 318, 61 S. E. 404; *Tison*, 125/7, 53 S. E. 809; *Nutting*, 16 A. 569, 85 S. E. 767; *Ga. Ry. Co.*, 1 A. 718, 57 S. E. 1076; *Moultrie Co.*, 122/26, 49 S. E. 729; *Kemp*, 122/559, 50 S. E. 465; *Patton*, 124/974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639; *Eastlick*, 116/48, 42 S. E. 499; *Herrington*, 6 A. 864, 65 S. E. 1064; *Luquire*, 121/635, 49 S. E. 834; *Suttles*, 117/216, 43 S. E. 486; *Equitable M. Co.*, 119/283, 46 S. E. 440; *Burton*, 136/422, 71 S. E. 870; *Southern Ry. Co.*, 136/479, 71 S. E. 769; *Helms*, 136/802, 72 S. E. 246; *Webb*, 146/462, 91 S. E. 489; *Planters Cotton-Oil Co.*, 126/623, 55 S. E. 495, 6 L. R. A. (N. S.) 1180; *Miller*, 126/746, 55 S. E. 952. Verdict based on, unauthorized. *lb*.

Reason for exclusion of hearsay. *Fender*, 131/441, 62 S. E. 527.

Receipt excluded as hearsay. *Hornsby*, 12 A. 697, 78 S. E. 267.

Relationship, admissibility of sayings of decedent as to. *Malone*, 113/791, 39 S. E. 507, 84 Am. St. R. 259. When not admissible. *Greene*, 111/735, 36 S. E. 957; *Terry*, 142/224, 82 S. E. 566.

Admissibility of declarations or recitals as to. *Lanier*, 123/626, 632, 51 S. E. 623.

Proved by general repute in family, not in community; except marriage. *Drawdy*, 130/162, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Not proved by general repute. *Lamar*, 108/158, 33 S. E. 958.

Res gestæ, when hearsay admissible as. *Atlanta R. Co.*, 122/99, 49 S. E. 313.

Reviewing court will not assume that positive testimony was hearsay, in absence of showing. *Brown*, 141/420, 81 S. E. 196.

Sample of oil, testimony that witness took, to broker, who read telegram offering certain price for goods like sample, hearsay. **Blakely Oil & Co.**, 134/140, 67 S. E. 389.

Search, hearsay as to explanation of reason for, admissible. But statements conveying information, not admissible as proof of facts averred in them. **Cody**, 124/446, 52 S. E. 750.

Servant, when hearsay not objectionable, touching authority of, as to instruction he received. **Wright**, 139/343, 77 S. E. 161.

Sheriff, what counsel learned from, was hearsay. **Eplan**, 134/511, 68 S. E. 78.

Shipper's invoice not objectionable as hearsay, when. **Central Ry. Co.**, 8 A. 18, 68 S. E. 492.

Shooting: Statement of wounded man as to who shot him, hearsay. **Cason**, 134/786, 68 S. E. 554.

Testimony that, immediately after accused shot, some one said to him "You have done killed him," to which he made no reply, was not inadmissible as hearsay. **Clark**, 117/254, 43 S. E. 853.

"He has shot that boy," objectionable as hearsay; but its admission harmless in the case. **Johnson**, 136/804, 72 S. E. 233.

Sickness; declaration of person that he was sick, rejected as hearsay. **Peacock**, 10 A. 402, 73 S. E. 404.

Solvency or insolvency, or poverty, hearsay not admissible to prove. **Moore**, 128/95, 57 S. E. 110.

Specific criminal acts, hearsay as to, when allowable on cross-examination. **Moulder**, 9 A. 438, 439, 71 S. E. 682.

Statement of accused on trial, error in charge of court excluding hearsay in, from consideration. **Stanley**, 9 A. 141, 70 S. E. 894.

Of one jointly indicted with one accused of murder. **Gibbs**, 144/166, 86 S. E. 543.

Stenographic report, transcript of, not objectionable as hearsay. **Lowe**, 125/55, 53 S. E. 1038.

Stolen property, sayings of prosecutor, and of owner of, inadmissible. **Green**, 112/638, 37 S. E. 885.

Student, testimony that others reported that record of, was good, excluded as hearsay. **Polk**, 18 A. 324, 89 S. E. 437.

Supplemental testimony of the person quoted, when hearsay rendered admissible by. **Stephens**, 9 A. 608, 71 S. E. 1004.

Telephone, testimony as to order received over, and called out to another, not excluded as hearsay. **Stamps**, 8 A. 506, 70 S. E. 81.

Third person's statement to witness, that the accused "had his coat," excluded. **Scott**, 14 A. 806, 82 S. E. 376. Declaration of third person excluded as hearsay. **Bishop**, 125/29, 53 S. E. 807; **Bundrick**, 125/753, 54 S. E. 683.

Threats; hearsay as to, admitted, to explain motive in signing note. **Third National Bank**, 19 A. 208, 91 S. E. 346.

Against witness, no cause for new trial in receiving hearsay. **McCarty**, 23 A. 79, 97 S. E. 446.

Time of occurrence, hearsay admitted to fix, when. **A. C. L. R. Co.**, 8 A. 197, 68 S. E. 875.

Truth of the matter asserted, hearsay rule excludes extrajudicial utterances only when offered to evidence. **Fitzgerald**, 10 A. 71, 72 S. E. 541.

Uncontroverted fact, hearsay as to, harmless. **Milam**, 108/29, 33 S. E. 813.

Value shown by hearsay. **Landrum**, 8 A. 209, 68 S. E. 862. How proved; hearsay admissible as to market value. **Brooke**, 19 A. 21, 90 S. E. 1037.

Verdict, hearsay no basis for. **Morris**, 5 A. 139, 62 S. E. 711.

Whisky, testimony that one going into house said whisky could be bought there, not objectionable as hearsay, when. **Carswell**, 7 A. 199, 66 S. E. 488.

That a certain place was known as "Borders' place" that it was "called the whisky stand," and "that is where they go to get whisky," not excluded

as hearsay. **Borders**, 18 A. 333, 89 S. E. 451.

Testimony on trial of one charged with selling liquor, that a man to whom the witness had given money to buy whisky returned with whisky, not excluded as hearsay. **Grusin**, 10 A. 152, 75 S. E. 350.

Wife of grantor of land, statements by, not admissible. **Kemp**, 144/717, 87 S. E. 1030.

Complaints of, to husband, when admissible as *res gestæ*. **City of Cedar-town**, 2 A. 588, 59 S. E. 836.

Will, statement of decedent of his desire to make, was admissible. **Landrum**, 148/774, 98 S. E. 477.

Witness, hearsay is no showing that witness hunted for is in another State. **Dunaway**, 142/383, 82 S. E. 1071.

Words constituting conduct, not excluded under hearsay rule, when. **Fitzgerald**, 10 A. 71, 75, 72 S. E. 541.

8. INTERROGATORIES AND DEPOSITIONS.

Admissibility of interrogatories depends on proper execution, return, and transmission, unless waived. **Johnstone**, 8 A. 807, 70 S. E. 180.

Affidavits used at prior interlocutory hearing, interrogatories can not render admissible statements in. **Daugharty**, 134/651, 68 S. E. 472.

Agreement that "the answers must be written by the witness personally," substantially complied with, where written from his dictation, and read to and signed by him. **Glenn**, 128/596, 58 S. E. 26.

Strict compliance with terms of, necessary, to render depositions admissible, where the parties have agreed that one commissioner may take them, under condition stated. **Rooney**, 115/400, 41 S. E. 648.

Interrogatories without commission and by consent, when not excluded, though one named as commissioner did not act. Dissent: must be executed

agreeably to convention. **County of Butts**, 135/27, 28, 68 S. E. 876.

Attach interrogatories to answers, failure to, no reason for excluding them, when together in envelope duly sealed and returned. **A., B. & A. R. Co.**, 9 A. 647, 72 S. E. 63.

Attesting witness to will, in other county, necessity for interrogatories as to **Bowen**, 136/861, 72 S. E. 340.

Attorney's office, interrogatories executed in, not presumed executed by his employee. **Coker**, 112/71, 37 S. E. 122.

Depositions not excluded because counsel acted as commissioner when prior interrogatories were taken of the same witness. **Park**, 139/585, 77 S. E. 922. Interrogatories suppressed, where counsel took them out for postmaster's indorsement, without order of court. **Vinton**, 136/687, 71 S. E. 1119.

Character of evidence expected, interrogatory, by itself or in connection with other interrogatories, should put opposite party on notice of. **Taylor**, 127/138, 56 S. E. 292.

Commission, interrogatories executed without, no waiver, properly rejected. **Merchants Bank**, 108/768, 33 S. E. 430.

Execution of interrogatories, when not invalid for failure to insert names of commissioners in blanks. **Page**, 106/77, 31 S. E. 804.

Depositions not inadmissible because commissioner does not affirmatively certify he is sworn officer. **Brinkley**, 131/226, 62 S. E. 67.

Interrogatories not objected to; that commissioner was related to counsel with contingent fee, when no cause for new trial. **Nashville &c. Ry.**, 139/300, 76 S. E. 1009.

Contempt in refusing to answer questions in depositions. **Fenn**, 122/280, 50 S. E. 103.

Copy of account may be made part of answer to interrogatories. when. **Arnold**, 4 A. 56, 60 S. E. 815.

Corporation, interrogatories sued out by, for its "vice-president and manager," admissibility of answers to, as admiss-

sions of corporation. **Sizer**, 129/144, 148, 58 S. E. 1055.

County of 20,000 or more inhabitants, commissioner to take depositions in, under Civil Code, §§ 5315 et sq., may act in cases in any court of record in the county. **Parker-Hensel Co.**, 7 A. 396, 66 S. E. 1038. Depositions may be taken in different county, where witness resides, before a commissioner thereof. **Wells**, 144/188, 86 S. E. 546. When no good objection to interrogatories that wrong county was written at head of answers. **Baird**, 124/252, 52 S. E. 655.

Cross-examine, depositions to, though party admitted to propound cross-questions on prior interrogatories of same witness. **Park**, 139/585, 77 S. E. 922.

Date, effect of discrepancy between depositions and attached contract as to. **Ballew**, 16 A. 149, 84 S. E. 597.

Deficiencies in formal requisites as to interrogatories, not supplied by counsel's statement in court. **Hosch Lumber Co.**, 123/341, 51 S. E. 439.

Delay of effort to procure testimony, reason for refusing continuance. **Kirby Planing-Mill Co.**, 11 A. 645, 75 S. E. 1059.

Different case, answers to interrogatories in, when admissible as admissions. **Sizer**, 129/148, 58 S. E. 1055.

Interrogatories taken for action that was dismissed, admissible in later suit between same parties, involving same cause, in different court. **Allen**, 129/748, 59 S. E. 813.

Endorsement by judge or justice on package, law as to, substantially complied with. **Keys**, 111/874, 36 S. E. 948.

Exceptions as to admission of interrogatories, when not sufficient; objections, how to be raised. **Carolina Co.**, 3 A. 732, 60 S. E. 375. Record should disclose substance of interrogatory not fully answered, as basis for exception. **Mallory**, 135/703, 70 S. E. 586.

Expense of commissioner nominated by opposite party. **Thompson**, 123/112, 51 S. E. 33.

Form of interrogatories; greater liberality allowed as to, than as to questions to witness on the stand. **Phinazee**, 123/232, 51 S. E. 300.

Former trial, interrogatories read at, not excluded on objection for improper execution and return. **Martin**, 142/807, 83 S. E. 958.

General interrogatory answered by going into matters not specifically inquired about, rule as to. **White**, 105/26, 31 S. E. 119. Interrogatory asking witness to state all he knows that will benefit a party, properly rejected. **McBride**, 102/422, 30 S. E. 999; **White**, 105/26, 31 S. E. 119; **Slaughter**, 127/748, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Impeachment by proof of statements at variance with depositions, foundation for, how laid. **Raleigh R. Co.**, 113/866, 39 S. E. 555.

Jury-room, depositions not to be taken to; aliter as to letters introduced in evidence. **Rudolph**, 16 A. 354, 85 S. E. 365. Interrogatories read in evidence should not be delivered to the jury. **Shedden**, 121/637, 49 S. E. 719.

Leading interrogatories, discretion of court as to allowing them read. **Holmes**, 121/241, 48 S. E. 934, 104 Am. St. R. 103; **Phinazee**, 123/230, 51 S. E. 300.

How objection must be made; liberal interpretation of rule as to. **Franks**, 111/87, 36 S. E. 314.

Objection to, must be made and filed as required by rule of superior court. **Gress Co.**, 2 A. 208, 58 S. E. 384.

When interrogatories not leading. **King**, 114/307, 40 S. E. 262; **Hix**, 124/548, 52 S. E. 890. Interrogatory is leading only when it suggests the answer desired. **Sivell**, 115/667, 42 S. E. 151.

Lost interrogatories must be accounted for, before introducing parol evidence of what they contained. **Trentham**, 118/530, 45 S. E. 421. Establishment of copy. **Gary**, 142/153, 82 S. E. 513. **Non-resident witness**, interrogatories of, introduced, other party not allowed to

put in his former interrogatories in other case between same parties. *Tillman*, 134/661, 68 S. E. 504.

Notice, depositions not admissible, if statute not complied with as to giving of. *Bank of Lavenia*, 140/594, 79 S. E. 459; *Hammond*, 10 A. 286, 73 S. E. 542.

Testimony by interrogatories, not admissible without notice or waiver of it. Where party dies, notice to his counsel not sufficient. *Wright*, 127/365, 56 S. E. 442.

Where plaintiff gave, that depositions would be taken at a stated time and place, and failed to appear, depositions then and there taken without notice to him, on what was called "cross-examination," were not admissible. *Hesch Lumber Co.*, 123/341, 51 S. E. 439.

Not essential that notice state name of officer before whom depositions to be taken. *Park*, 139/585, 77 S. E. 922.

Objections must be filed with interrogatories before commission issues. *King*, 114/308, 40 S. E. 262.

To interrogatories, when competent at trial, though not noted before commissioner. *Erk*, 137/608, 73 S. E. 1065.

To reception of interrogatories must make the showing required by the Civil Code, § 5904. *Roper*, 143/128, 84 S. E. 553.

When objection to depositions waived by not making it before commissioner, and when not. *Ga. Ry. & Co.*, 9 A. 106, 70 S. E. 607.

Entry of objection to interrogatories, when too general to exclude them on specific objections at trial. *Tillman*, 134/661, 68 S. E. 504.

One set of interrogatories propounded to two witnesses, and answered separately; not rejected. *Macon &c. R. Co.*, 13 A. 407, 79 S. E. 243.

Paper not attached, interrogatories referring to, answers excluded. *Shockley*, 103/156, 29 S. E. 694.

Part admissible, objection to whole answer to interrogatory, not well taken.

Shedden, 121/639, 49 S. E. 719. Whether part of answers not read by party introducing other part should be treated as his evidence when read by opposite party. *Reed*, 117/119, 43 S. E. 433.

Party introducing and reading part of them, interrogatories are offered by. *Waller*, 102/687, 28 S. E. 284.

Power to compel witness to answer interrogatories. *Brinson Ry. Co.*, 11 A. 737, 76 S. E. 76.

Re-execution, interrogatories not properly executed and returned can not, without order for, be taken from clerk's office by counsel and sent to commissioners, to be again returned. *White*, 123/353, 51 S. E. 411.

Subscribing witnesses, absent, admissibility of interrogatories of; and when may be dispensed with. *Wells*, 140/119, 78 S. E. 823, 47 L. R. A. (N. S.) 722. *Ann. Cas.* 1914C, 898.

Waiver of formalities as to execution and return is not waiver of formalities as to transmission. *Johnstone*, 8 A. 807, 70 S. E. 180.

Not in writing, not enforced, where denied. *Johnstone*, 8 A. 809, 70 S. E. 180.

Withdrawal of answer on cross-interrogatory, allowable in discretion of court; not of right. *Humphreys*, 133/456, 66 S. E. 158. Interrogatories offered and received, not withdrawn over protest of adverse party. *Alabama R. Co.*, 131/238, 62 S. E. 71. **Witness** present, yet depositions may be read at trial, in court's discretion. *Southern Ry. Co.*, 138/371, 75 S. E. 462; *Seaboard Ry.*, 10 A. 273, 73 S. E. 588. Depositions taken with stenographer's aid should be signed by witnesses. *Woodward*, 145/252, 88 S. E. 974. Depositions not inadmissible because not signed by witness. *Brinkley*, 131/226, 62 S. E. 67.

9. JUDICIAL NOTICE.

Bankruptcy proceedings, judicial notice not taken of pendency of. *Woodward*,

- 116/750, 42 S. E. 1030; McDougald, 10 A. 653, 73 S. E. 1089.
- Boundaries** and relative location of counties, districts, and land lots, judicially recognized. *Stanford*, 122/404, 50 S. E. 161; *McCaskill*, 138/125, 74 S. E. 1032; *Huxford*, 124/182, 52 S. E. 439; *S. A. L. Ry.*, 12 A. 208, 77 S. E. 12.
- Carrier**, judicial cognizance not taken of schedule of rates filed by, with interstate-commerce commission. *Hartwell Ry. Co.*, 10 A. 771, 74 S. E. 310; *Cranor*, 13 A. 93, 78 S. E. 1014.
- Charter** issued by secretary of State, judicial cognizance of. *Griffin*, 15 A. 521, 530 83 S. E. 891. Whether court will take judicial cognizance of, not decided. *Dunn*, 13 A. 314, 79 S. E. 170. Judicial cognizance that bank was chartered. *Griffin*, 18 A. 403, 89 S. E. 625.
- Church**, rules and regulations of, not judicially recognized. *Flanders*, 120/888, 48 S. E. 327.
- City court**, judicial cognizance of provisions of act creating. *Young*, 132/490, 64 S. E. 552. Judicial cognizance as to the State and county in which a named city court is, when taken. *Perry*, 113/938, 39 S. E. 315.
- Congress**, judicial cognizance taken of acts of, as domestic laws. *Gainesville Midland Ry.*, 141/352, 80 S. E. 997.
- Cotton** judicially recognized as a farm product. *Whitaker*, 9 A. 213, 70 S. E. 990.
- County** judicially recognized as body corporate. *Taylor*, 123/186, 51 S. E. 326. Judicial notice of county site. *Crosson*, 125/292, 54 S. E. 181. Judicial cognizance taken that territory of new county was formerly in county governed by local liquor law. *Parker*, 126/443, 55 S. E. 329.
- Courts** in a certain county of this State, and their jurisdiction, judicial cognizance taken as to. *Kiser*, 11 A. 191, 74 S. E. 1036. Judicial cognizance, when not taken, of court that has jurisdiction of defendant's person, where plea states his residence. *Akers*, 122/279, 50 S. E. 105.
- Custom**, judicial cognizance of (that insurance companies prepare their contracts). *Great Eastern Casualty Co.*, 21 A. 586, 94 S. E. 843. Judicial cognizance of banking and mercantile customs. *Pollak*, 137/25, 72 S. E. 415, 35 L. R. A. (N. S.) 513.
- Education**, judicial cognizance of rules of State Board of. *Board of Education of Doerun*, 22 A. 72, 77, 95 S. E. 753.
- Election**, judicial notice of result of. *Oglesby*, 121/602, 49 S. E. 706; *Woodard*, 103/498, 30 S. E. 522.
- Express company**, judicial cognizance taken that principal office of, was in a certain county. *Wallace*, 7 A. 565, 67 S. E. 694.
- Federal court**, judicial cognizance not taken, in State court, of proceeding in. *Hunter*, 1 A. 1, 58 S. E. 54.
- Government**, judicial cognizance of practice of departments of. *Griner*, 4 A. 235, 61 S. E. 147; *Board of Education of Doerun*, 22 A. 78, 95 S. E. 753.
- "Greenback"** judicially recognized as popular designation of a species of U. S. currency. *Jones*, 10 A. 59, 72 S. E. 518.
- Infant** of tender years, incapacity of, to render valuable services, when judicially recognized, and when issue for jury. *Holmes*, 145/172, 88 S. E. 924; *James*, 138/415, 416, 75 S. E. 431, 41 L. R. A. (N. S.) 795.
- Intoxicating liquor**, prohibition of sale of, judicially noticed. *Bass*, 1 A. 790, 57 S. E. 1054. Also the intoxicating character of liquor. *Ayash*, 21 A. 264, 94 S. E. 282; *Bradley*, 121/205, 48 S. E. 981. Intoxicating character of beer. *O'Connell*, 5 A. 234, 62 S. E. 1007. That whisky is spirituous and intoxicating. *Maddox*, 8 A. 817, 70 S. E. 214; *Hodge*, 116/852, 43 S. E. 255; *Benton*, 9 A. 422, 71 S. E. 498. That corn whisky is intoxicating. *Fears*, 125/740, 54 S. E. 661. That whisky is a spirituous alcoholic, and intoxicating liquor. *O'Connell*, 5 A. 234, 62 S. E. 1007. That lager beer is intoxicating. *Bragg*, 15 A. 627, 84 S. E. 82; *Cripe*, 4 A. 832, 62 S. E.

- 567; *Smith*, 113/758, 39 S. E. 294. Not true as to certain brands of beer. *Bragg*, 15 A. 627, 84 S. E. 82; *DuVall*, 115/814, 42 S. E. 265. Nor as to all malt liquors. *Eaves*, 113/750. 39 S. E. 318. Charge that fermented wine is judicially recognized as intoxicating, when misleading. *Hall*, 122/142, 50 S. E. 59.
- Judge**, judicial notice taken of who was, at a former time. *Moore*, 6 A. 452. 65 S. E. 328; *Bacon*, 19 A. 661, 91 S. E. 1066. Judicial cognizance taken as to the time during which a certain judge held that office. *Jossey*, 119/765, 45 S. E. 350.
- Judgment**, judicial cognizance of contents of, by court that rendered it. *Fitzgerald Granitoid Co.*, 15 A. 174, 178, 82 S. E. 774; *Fagan*, 1 A. 25, 57 S. E. 1052.
- Copy of record of, in same court, when not judicially recognized. *Glaze*, 105/295, 31 S. E. 169.
- Judicial cognizance not taken of record of, in the same court, in another case. *O'Connor*, 11 A. 247, 75 S. E. 110.
- Land lots**, judicial cognizance of number of acres in. *Williams*, 2 A. 629, 58 S. E. 1071; *Guest*, 145/593, 89 S. E. 687.
- Judicial cognizance of size and shape of. *Payton*, 128/514, 58 S. E. 40, 11 Ann. Cas. 163; *Osteen*, 131/212, 62 S. E. 37, 127 Am. St. R. 212.
- Law of other State**, when must be specially pleaded, to admit proof of. Provision as to judicial recognition of (§ 5818), explained. *Savannah R. Co.*, 121/394, 49 S. E. 308. Judicial cognizance not taken of statute of other State. *Cummings*, 116/458, 42 S. E. 732.
- Statute must be pleaded. *Mo. Ins. Co.*, 1 A. 446, 58 S. E. 93; *Charleston Ry. Co.*, 5 A. 668, 673, 63 S. E. 862.
- When court may act on knowledge of. *Southern Ry. Co.*, 13 A. 799, 81 S. E. 269.
- When judicially recognized without proof; "publication by authority" shown, how. *Seaboard Ry.*, 117/98, 43 S. E. 494.
- Life-insurance**, judicial cognizance that a person with tuberculosis could not obtain. *National Life Ins. Co.*, 18 A. 494, 89 S. E. 633.
- Local act to repeal general law**, judicial cognizance of. *Griffin*, 114/67, 39 S. E. 913.
- Money denominations and meaning of words describing them**, judicial cognizance of. *McDonald*, 2 A. 633, 58 S. E. 1067.
- Mortality and annuity tables**, judicial cognizance not taken of contents. *W. & A. R. Co.*, 113/776, 39 S. E. 447; *Southern Ry. Co.*, 6 A. 172, 64 S. E. 703. Admissibility of, without evidence of value of services or of earning capacity; conflict of decisions. *lb.* 178. Judicial cognizance of standard mortality and annuity tables. *Atlanta Ry. Co.*, 118/449, 45 S. E. 494; *W. & A. R. Co.*, 115/716, 42 S. E. 74.
- Municipal corporation**, judicial knowledge as to existence of. *Miller*, 21 A. 367, 94 S. E. 691; *S. A. L. Ry.*, 12 A. 208, 77 S. E. 12.
- Location of, in certain county, judicially noticed. *Beaty*, 132/516, 64 S. E. 321; *Mitchell*, 118/848, 45 S. E. 703.
- Judicial notice as to governmental function of. *City Council of Augusta*, 148/734, 98 S. E. 345; 23 A. 523, 98 S. E. 738.
- Ordinance**, judicial notice of, when not taken. *Moore*, 107/704, 33 S. E. 435; *Howell*, 13 A. 74, 78 S. E. 859; *Dorsey*, 7 A. 366, 66 S. E. 1096; *McAllister*, 7 A. 541, 67 S. E. 221; *Hill*, 125/697, 54 S. E. 354, 5 Ann. Cas. 614; *Wright*, 5 A. 750, 763, 64 S. E. 807; *Savannah R. Co.*, 121/396, 49 S. E. 308; *Eisfeldt*, 148/830, 98 S. E. 495; *Walker*, 103/423, 30 S. E. 253; *McDermott*, 18 A. 308, 89 S. E. 348; *Holcombe*, 18 A. 312, 89 S. E. 379; *Nobles*, 18 A. 497, 498, 89 S. E. 604, 605; *Hendricks*, 21 A. 528, 94 S. E. 807. Ordinance must be pleaded and proved; not judicially noticed. *Funk*, 145/828, 90 S. E. 64;

Pounds, 142/417, 83 S. E. 96. Judicial cognizance of ordinance, not taken by superior court. **Berry**, 17 A. 326, 86 S. E. 744; **Davis**, 17 A. 737, 88 S. E. 416. Taken in municipal court. **Taylor**, 118/63, 44 S. E. 845.

Name of railroad corporation, judicial cognizance as to. **Atlantic R. Co.**, 6 A. 130, 64 S. E. 665. Judicial notice taken of common abbreviations and equivalents of Christian names. **Goodell**, 112/435, 37 S. E. 725.

Newspaper, publication of, by a certain corporation, not judicially noticed. **Constitution Publishing Co.**, 16 A. 599, 85 S. E. 934.

Officers, commissioned by the Governor of this State, judicial cognizance of, taken. **Abrams**, 121/170, 48 S. E. 965; **Bailey**, 122/616, 50 S. E. 388; **Glover**, 122/773, 50 S. E. 956.

Physical laws, judicial cognizance of. **Rome Ry. Co.**, 3 A. 769, 60 S. E. 468.

Place designated as "the corner of Farm and Bryan," judicial cognizance not taken of. **Kolman**, 124/63, 52 S. E. 82. Or "at Ponce De Leon Park." **Edwards**, 124/78, 52 S. E. 297. Judicial cognizance that a place between a certain town and a certain river is in a certain county. **S. A. L. Ry.**, 12 A. 206, 77 S. E. 12.

Race superiority, social status, etc., judicial cognizance of. **Wolfe**, 2 A. 500, 58 S. E. 899.

Railroad commission, judicial notice of rules of. **A., B. & A. R. Co.**, 6 A. 319, 64 S. E. 1098; **S. A. L. Ry.**, 5 A. 396, 63 S. E. 252; **Central Ry. Co.**, 8 A. 7, 68 S. E. 775.

Whether judicial cognizance taken of minutes of, as to promulgation of rules, not decided; semble, it may be taken. **Augusta Brokerage Co.**, 121/54, 48 S. E. 714.

Rule or absence of rule of, not judicially recognized. **Shurman**, 148/1, 95 S. E. 698.

Railroad company incorporated in this State, judicial notice taken as to principal office or legal residence of. **White**,

5 A. 308, 63 S. E. 234; **Central Ry. Co.**, 16 A. 701, 86 S. E. 56. Judicial notice that a named railroad company is a corporation chartered in this State. **Trueheart**, 13 A. 661, 79 S. E. 755; **Atlanta R. Co.**, 124/125, 52 S. E. 320; **Dixon**, 16 A. 290, 85 S. E. 257.

Property, successive ownership of, judicially recognized, where one company was successor of another by legislation. **Atlanta R. Co.**, 125/543, 54 S. E. 736.

Duties of superintendent of, in particular city, not judicially recognized. **Southern R. Co.**, 103/565, 29 S. E. 760.

Records, judicial cognizance taken of State's employment of compiler of, and of his work. **State Historical Asso.**, 6 A. 562, 65 S. E. 293. Whether judicial notice taken of matters of record in departments of government. **Dunn**, 13 A. 314, 79 S. E. 170.

Savannah, provisions of charter of, in Code of Georgia of 1882, as to judicial cognizance of ordinances of that city, not applied to ordinances not in the record. **McDermott**, 18 A. 308, 89 S. E. 348.

Sewer system and its care judicially recognized as relating to public health. **City Council of Augusta**, 148/734, 38 S. E. 345.

Statements of counsel, made in private conversation with judge, not proper to take judicial cognizance of. **Cramer**, 113/967, 39 S. E. 459.

Streets, judicial cognizance not taken that there must be four corners at intersection of. **Pearson**, 139/455, 77 S. E. 387. Judicial cognizance that street sweepings contain matter injurious to health. **Mayor &c. of Savannah**, 142/409, 83 S. E. 109, L. R. A. 1915C, 741, Ann. Cas. 1916C, 240.

Sunday, judicial cognizance that work on, is not one of necessity. **McCain**, 2 A. 389, 58 S. E. 550.

Supreme Court, judicial cognizance taken by, of record on file, on former writ

of error in same case. **Frank**, 142/761, 83 S. E. 645, L. R. A. 1915D, 817.

Time, judicial cognizance of computation of, and of coincidence of days of weeks with days of month. **Dorough**, 118/178, 45 S. E. 22. Of computation of time, and of what dates are Sundays. **Williams**, 10 A. 840, 74 S. E. 442. Of difference between "Central" and "Eastern" time, whether taken. **Lavender**, 9 A. 856, 72 S. E. 437. Of the dates fixed by law for the beginning of the sessions of superior courts. **Edwards**, 123/542, 51 S. E. 630. Of date on which superior court was required to convene in 1897. **Crawford**, 118/633, 45 S. E. 482.

Turpentine, judicial cognizance that it can not be extracted from cypress. **Gray Co.**, 122/348, 50 S. E. 164.

Value of article, judicial cognizance not taken of, unless law so designates. **Ayers**, 3 A. 307, 59 S. E. 924. Judicial cognizance not taken, that cotton has value. **Wright**, 1 A. 158, 57 S. E. 1050. Not taken, that value of ship's furniture was of value sufficient to satisfy attachment. **Fenwick Shipping Co.**, 133/48, 65 S. E. 140. Taken, of value of U. S. coin, and of national bank bills. **Joiner**, 124/102, 103, 52 S. E. 151; **Ector**, 120/543, 48 S. E. 315.

Words, judicial notice of vulgar or profane character of. **Haines**, 8 A. 627, 631, 70 S. E. 84. Of meaning of colloquial words. **Sims**, 1 A. 776, 57 S. E. 1029. Of words, "send a man after" another, not taken to mean sending an officer to arrest. **Bond**, 122/813, 50 S. E. 934.

10. PAROL, EXTRINSIC, AND SECONDARY EVIDENCE.

Abbreviations and technical terms; ambiguity explainable by parol. **L. & N. R. Co.**, 136/538, 71 S. E. 884.

On pawn-ticket, explanation of, by jeweler. **Wilensky**, 15 A. 360, 83 S. E. 276. Parol, to explain meaning of

"O. K.," on written order, admitted. **Penn Tobacco Co.**, 109/428, 34 S. E. 679.

Accessible to diligence, secondary evidence not admitted without sufficient cause shown why primary is not. **Fla. C. Co.**, 136/411, 71 S. E. 734.

Account for merchandise and cash sued on, not competent to show that "cash" meant notes for goods other than those on the account. **Burns**, 110/267, 34 S. E. 575.

Admissibility of parol testimony as to matter of. **Keaton**, 16 A. 473, 85 S. E. 682; **Smith**, 16 A. 449, 85 S. E. 612.

Parol proof of entries on, admitted. **Turner**, 18 A. 653, 90 S. E. 225. Not admitted. **Hagood**, 5 A. 85, 62 S. E. 641.

Action in court, nature and result of, not provable by parol testimony. **Kennedy**, 18 A. 150, 88 S. E. 1000.

Administrator, parol evidence that order for sale by, was granted, when admissible. **Brown**, 141/420, 81 S. E. 196. Record of administrator's bond, when admissible in lieu of original. Certified copy is primary evidence of. **Richardson**, 103/741, 30 S. E. 573.

Admission of secondary evidence, generally not ground for reversal, where the fact to which it relates is shown by other evidence. **Fletcher**, 10 A. 184, 73 S. E. 38. When no ground for new trial. **Summerford**, 126/153, 54 S. E. 1025.

Advertisement of sale of realty; proof of contents, when not admissible, unless original lost. **Parks**, 142/391, 83 S. E. 100.

Secondary evidence admissible, without accounting for original posted notice of constable's sale; original presumed lost after date for sale. **Hogan**, 7 A. 232, 66 S. E. 550; **Taylor**, 7 A. 233, 66 S. E. 550.

Affidavit of tax-collector not admitted to show contents of tax digest. **Finnay**, 113/364, 38 S. E. 818.

As to contents of writings, rejected on interlocutory hearing. **Nelson**, 112/188, 37 S. E. 404.

Agent for another, parol that one signing contract was acting as, admissible. *Fitzgerald Co.*, 3 A. 212, 59 S. E. 713.

Of plaintiff, parol that assignee in writing of chose in action acted as, not admissible. *Fla. &c. Co.*, 136/411, 71 S. E. 734.

Parol to show authority of, to sign note. *Taylor*, 18 A. 161, 89 S. E. 77.

Parol to enlarge or extend powers of, limited by writing, not admitted. *Lippman*, 108/397, 33 S. E. 897.

Parol that note signed by, was intended by both parties to be the obligation of the principal. *Burkhalter*, 127/438, 56 S. E. 631, 119 Am. St. R. 343.

For defendant, parol not admissible to show that signor contracted as. *Carr*, 141/221, 80 S. E. 716.

Parol to show revocation of written authority to, admissibility of. *Friedman*, 17 A. 677, 87 S. E. 1099.

Parol to show authority to execute bond, when not admissible. *N. Y. Life Ins. Co.*, 4 A. 25, 60 S. E. 828.

Parol to show for whom one signed note as "agent," admissibility of. *Ocilla Southern R. Co.*, 13 A. 506, 79 S. E. 480.

Parol to add to or vary written contract between principal and agent, as to agent's commission, not admitted. *Ware*, 20 A. 202, 92 S. E. 961.

Parol representations of agent taking contract of subscription, when not admissible. *Barrie*, 105/34, 31 S. E. 121.

Parol to show that a written contract of sale, on its face absolute, made by an agent, was made subject to ratification, inadmissible. *Bass Co.*, 119/124, 45 S. E. 980.

Agreement, intention, or understanding, parol evidence of, when written contract executed, not admissible. *Pennington*, 124/147, 52 S. E. 324; *Biggers*, 124/1045, 53 S. E. 674.

Which must be in writing, parol not allowed to modify. Aliter, if contract in parol were good. *Aug. So. R. Co.*, 106/864, 33 S. E. 28.

V. II—53.

In parol, at variance with writings, character of evidence necessary to set up. *Dolvin*, 131/301, 62 S. E. 198.

In parol, variant from written contract sued on, not admissible. *Singer Sewing-Machine Co.*, 135/22, 68 S. E. 785; *Harris*, 135/131, 68 S. E. 1040.

In parol, not added to complete contract, where no proceeding to correct it for fraud or mistake. *Jones*, 141/730, 82 S. E. 451.

Alimony, when no error in refusing to receive oral testimony on hearing for. *Reynolds*, 130/460, 60 S. E. 1053.

Aliunde proof, when admissible on motion to dismiss appeal. *Singer*, 126/45, 54 S. E. 821.

Alteration of writing, parol to show, when admissible. *Howard Piano Co.*, 7 A. 548, 67 S. E. 277. Parol as terms of contract before alteration, or to show that without alteration no contract would exist, admissible on issue of non est factum. *Hill*, 7 A. 64, 66 S. E. 280.

Ambiguity explainable by parol. *Carter*, 106/281, 31 S. E. 651; *Burke*, 106/330, 32 S. E. 134; *Barrie*, 104/315, 30 S. E. 840; *Byrd*, 127/34, 56 S. E. 86; *Ford*, 133/238, 65 S. E. 444; *Ga. Iron Co.*, 133/326, 65 S. E. 775; *Wiseberg*, 3 A. 362, 59 S. E. 1112; *Williams*, 3 A. 446, 60 S. E. 113; *Martin*, 3 A. 784, 60 S. E. 825; *Leffler Co.*, 1 A. 64, 57 S. E. 911; *McCommons*, 131/313, 62 S. E. 230; *Novelty Hat Co.*, 126/800, 55 S. E. 923; *State Historical Asso.*, 6 A. 560, 65 S. E. 293; *Hall*, 122/254, 50 S. E. 106; *Morrison*, 122/417, 50 S. E. 178, 69 L. R. A. 87. Compare *Edwards*, 122/827, 50 S. E. 943.

In lease; suit by lessee for damages; pleadings laid no foundation for extrinsic evidence. *Anderson*, 106/750, 32 S. E. 542. Bond for title. *Tumlin*, 108/520, 34 S. E. 171.

In contract, open to explanation by proof of circumstances. *Andrews*, 145/826, 90 S. E. 59.

In letter, and parol evidence explaining, made issue for a jury. *McFarland*, 127/97, 56 S. E. 74.

Ambiguity—(Continued).

In bill of lading, admissibility of parol to explain. *Ocean S. Co.*, 107/225, 33 S. E. 179.

In providing for payment of stated sum as thereafter agreed, could be explained by parol. *Morrison*, 119/698, 46 S. E. 863.

In written instrument, not raised and then explained by parol. *American Harrow Co.*, 119/194, 45 S. E. 983.

Latent, testimony here not held to raise, in contract for future delivery of cotton. *Forsyth Co.*, 112/199, 212, 37 S. E. 485, 81 Am. St. R. 28.

Of intent of parties as to lease or executory contract to make lease, parol to explain. *Andrews*, 145/826, 90 S. E. 59.

Of description, explainable by parol. *Douglass*, 110/159, 35 S. E. 339; *Follendore*, 110/359, 35 S. E. 676. Not apparent in will, no parol evidence to show intention. *Cochran*, 110/762, 36 S. E. 71.

Of description of land conveyed, explainable by parol. *Simmons*, 138/605, 75 S. E. 671. How explainable by parol. *Pelham*, 137/39, 72 S. E. 417; *Fuller*, 137/66, 72 S. E. 504; *Napier*, 137/242, 73 S. E. 3, 38 L. R. 'A. (N. S.) 91, Ann. Cas. 1913A, 1013; *Thompson*, 137/308, 73 S. E. 640. Of personalty. *Clark*, 137/324, 73 S. E. 580.

Question for court, and not for witness. *Elliott*, 113/301, 38 S. E. 821.

Not explainable by parol evidence of undisclosed intent. Deed here not ambiguous. *Read*, 39/499, 77 S. E. 642.

In parol, not added to complete contract in written notice. *First National Bank*, 142/99, 82 S. E. 481.

Parol to explain meaning of ambiguous contract (to furnish "lumber enough to build one dwelling-house"), admitted. *Coleman*, 12 A. 798, 78 S. E. 429.

"All advertising matter that goes with an order of this size." *Doctor Shoop Medicine Co.*, 11 A. 491, 75 S. E. 822. "Electric outfit," as used in

contract. *Fountain*, 140/70, 78 S. E. 423.

Parol to explain ambiguity in note ("interest from 8 at 8 per cent. per annum"), admitted. *Bing*, 5 A. 583, 63 S. E. 652.

Parol admissible to show meaning put by parties on ambiguous writing when executed. *Simpson*, 130/271, 60 S. E. 541. Compare *Ramsey*, 130/672, 61 S. E. 538. Parol not received where no ambiguity raised. *Morehead*, 131/808, 63 S. E. 507. None in written contract here. *Pritchett*, 143/802, 85 S. E. 1000.

Amount of note, parol proof allowed as to, when. *Sasser*, 9 A. 178, 70 S. E. 980. Parol testimony, from recollection, as to amount of goods in depot, not secondary, though way-bills stated amount. *Davis*, 105/808, 32 S. E. 153.

Appeal papers, parol as to transmission of, not admissible, when. *Sanders*, 121/302, 48 S. E. 946.

Appearance and pleading in justice's court must be shown by docket, not by parol evidence. *Shearhouse*, 117/426, 43 S. E. 718.

Apply terms of written contract to the subject-matter, and remove uncertainty arising from such application, parol admissible to. *State Historical Assn.*, 6 A. 560, 65 S. E. 293; *Emerson*, 130. 103, 60 S. E. 255; *Simpson*, 130/271, 60 S. E. 541. Statements in affidavits were not admissible. *Wilson*, 141/799, 791, 82 S. E. 241.

Appointment of judge pro hac vice, evidence of. *Almand*, 17 A. 519, 87 S. E. 716.

Assignment, admissibility of parol proof as to name of assignee, and date. *Smith*, 13 A. 665, 79 S. E. 764.

In writing sent to other State for record; contents not proved by parol. Of chose in action in writing; that assignee took as agent of corporation afterward created, not to be shown by parol. *Fla. Coca Cola Co.*, 136/411, 71 S. E. 734.

Of wages and not loan, when parol not admissible to show transaction was. **King**, 4 A. 264, 61 S. E. 144.

Of fire-insurance policy must be in writing. **St. Paul Ins. Co.**, 113/786, 39 S. E. 483.

Agreement to make, parol as to, admitted. **Metropolitan L. Ins. Co.**, 14 A. 10, 80 S. E. 17.

"Attachments," in bill of sale of a "boiler and attachment thereto," parol to explain what was included in, admissible. **Strickland**, 20 A. 320, 93 S. E. 24.

Attestation of recorded deed, apparently regular, when parol received to attack. **Southern Iron & Co.**, 138/261, 75 S. E. 248, 41 L. R. A. (N. S.) 375.

Attorney's fees, parol to explain meaning of contract as to, not admissible. **West**, 23 A. 637, 99 S. E. 155.

Bank cashier's testimony, instead of bank books, when not admissible. **Baldwin State Bank**, 144/181, 86 S. E. 533.

Bankruptcy, testimony as to sale by trustee in, not open to sole objection that there was better evidence. **Brown**, 144/302, 87 S. E. 295.

That a person is trustee in, not shown by parol, when. **Traylor**, 11 A. 497, 75 S. E. 828.

Schedule, original triplicate is an office paper; certified copy is primary evidence. **Harvard**, 145/581, 89 S. E. 740.

Best evidence of contents of a writing is the writing itself; aliter as to what one person told another were its contents. **Minnesota Co.**, 122/20, 49 S. E. 783.

Must be produced, unless its absence is satisfactorily accounted for. **O'Connor**, 11 A. 248, 75 S. E. 110; **Compton**, 132/483, 64 S. E. 475; **Merchants Bank**, 104/165, 30 S. E. 650; **Odell**, 104/204, 30 S. E. 813; **Dickson**, 137/299, 73 S. E. 515; **Bowling**, 142/397, 83 S. E. 112; **Kelley**, 147/741, 95 S. E. 287.

Rule not applied where the matter to be proved is simply that a contract has been made, and not its terms. **Avery**, 17 A. 458, 87 S. E. 698.

Of marriage. **Southern Ry. Co.**, 126/2, 54 S. E. 911. As to settlement

of suit. **Hardwood Mfg. Co.**, 126/55, 54 S. E. 814.

Record is, that witness had been convicted of carrying concealed weapon. **Hunter**, 133/79, 65 S. E. 154. Previous conviction of witness for crime; judgment of court, not testimony. **Howard**, 144/169, 86 S. E. 540.

Record of employees, that name not on, shown by oral testimony. **Jordan**, 127/278, 56 S. E. 422.

Rule as to production of, not violated by proof of handwriting to show genuineness of signature. **McCray**, 134/416, 68 S. E. 62, 20 Am. Cas. 101.

Books of bank, instead of cashier's testimony. **Baldwin State Bank**, 144/181, 86 S. E. 538.

Parol evidence of matter of which there is better evidence, excluded. **Grantham**, 136/17, 70 S. E. 790. When parol not excluded on the ground that the best evidence is in writing. **Pitts**, 15 A. 436, 83 S. E. 673.

Complaint of error in admitting parol, over objection that there was higher written evidence, should show that there was such better evidence. **Brooke**, 119/947, 47 S. E. 341.

Bill of lading, parol to show incorrectness as to quantity of goods received, admitted. **Atlantic R. Co.**, 6 A. 572, 65 S. E. 355; **A. C. L. R. Co.**, 12 A. 77 S. E. 316.

Held by bona fide transferee for value, parol to deny recitals in, not admissible. **L. & N. R. Co.**, 8 A. 83, 68 S. E. 617.

Shown by parol to be equitable mortgage, when. **Ellison**, 7 A. 215, 66 S. E. 631.

Parol to affect, when not admissible. **McElveen**, 109/249, 34 S. E. 281; **W. & A. R. Co.**, 107/517, 33 S. E. 821.

Bond, administrator's record of, when admissible in lieu of original. Certified copy is primary evidence of. **Richardson**, 103/741, 30 S. E. 573.

Given in representative capacity as executor; testimony held not admissible. **Woodard**, 138/751, 76 S. E. 49.

Name of county and court in, supplied by parol, on scire facias to for-

felt the same. **Mason**, 3 A. 353, 60 S. E. 4.

Bond for title, description in, aided by parol. **Tumlin**, 108/520, 34 S. E. 171.

Books, parol as to contents of. **Johnson**, 125/243, 246, 54 S. E. 184. Book entries proved by certified copy, not by clerk's declaration to witness that the book was the road register. **Penick**, 131/385, 62 S. E. 300.

Boundary by land of designated person, recital of, aided by extrinsic evidence. **Glover**, 132/799, 798, 65 S. E. 64; **O'Neal**, 148/62, 95 S. E. 709; **Moody**, 131/521, 62 S. E. 821; **Frey**, 23 A. 160, 97 S. E. 753.

May be established by oral agreement duly executed by possession or otherwise. **Bunger**, 142/449, 83 S. E. 200, Ann. Cas. 1916C, 173.

Of land fixed, parol evidence admitted to adjust description thereto, not to change boundary. **Napier**, 137/242, 73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1913A, 1013. See **Pelham**, 137/39, 72 S. E. 417.

Parol agreement as to, admissible when. **Elkins**, 20 A. 737, 93 S. E. 236; **Farr**, 118/277, 45 S. E. 230; **Brooks**, 23 A. 800, 99 S. E. 540. Oral agreement carrying from lines stated in deed, not competent. **O'Neal**, 148/62, 95 S. E. 709. See **Boundaries**.

Building material bought by the promisor's contractor, parol to show promise to pay for, excluded. **Johnson, Lumber Co.**, 22 A. 97, 95 S. E. 310.

Carrier, delivery of packages by, and date and number, shown by parol. **Walker**, 11 A. 251, 74 S. E. 1100. Contract of carriage in writing; admissibility of parol evidence; and when not competent to testify that no agreement was made as to value. **Atlanta &c. R. Co.**, 145/708, 89 S. E. 817.

Certified copy of administrator's deed, admissibility of. **Brown**, 141/420, 31 S. E. 196.

Of deed improperly recorded, as basis of legal verdict, **Munroe**, 145/216, 88 S. E. 947.

Of recorded deed is secondary. **Alcusey Lumber Co.**, 146/310, 91 S. E. 104.

Certiorari applied for in time, not shown by aliunde proof. **Landrum**, 1 A. 216, 57 S. E. 965.

Change of contract after its execution, parol admissible to show. **Sparks Improvement Co.**, 4 A. 62, 60 S. E. 810. Not admitted, where contract requires such change to be in writing signed by a designated officer. **Sulunas Banana Co.**, 18 A. 306, 89 S. E. 376. Change with knowledge of agent of purchaser from vendee, inadmissible to show. **McNatt**, 143/160, 84 S. E. 447.

Character of instrument, parol helpful in determining. **Brice**, 118/130, 44 S. E. 843.

Charge to jury that in the absence of fraud or deception a written agreement controls, but if the writing be ambiguous it may be explained by parol testimony; not harmful here. **Wisnaker**, 16 A. 699, 86 S. E. 46.

Check, parol to show whether delivered and accepted as full or partial payment, admissible. **Gay**, 138/399, 75 S. E. 323. Parol to show that check reciting payment in full was not to operate as settlement until something more was done, admitted. **Copeland**, 8 A. 633, 70 S. E. 30.

Clerical error, parol evidence not admitted as to. **McConnell**, 17 A. 387, 87 S. E. 156.

"Closed," parol to illustrate meaning of, in agreement to pay commission for "making this trade, if it is closed," admitted. **Nutting**, 16 A. 569, 85 S. E. 767.

Collateral agreement, admissibility of parol proof. **Russell**, 9 A. 693, 72 S. E. 60; **Forsyth Co.**, 112/199, 37 S. E. 485, 81 Am. St. R. 28.

Parol-evidence rule not applied to. **Napier**, 19 A. 401, 94 S. E. 579.

Parol evidence of, not admissible to explain unambiguous contract of sale. **Brosseau**, 147/185, 93 S. E. 293.

Commitment trial; presumption that defendant's statement at trial was reduced to writing, as the law required it to be. *McDuffie*, 17 A. 343, 86 S. E. 821. Parol proof of such statement not admissible. *Ib.*

Comparison of writings, evidence by, is not secondary, where there is no subscribing witness. *Paulk*, 8 A. 738, 70 S. E. 145.

Condition on which written instrument was to become contract, parol to show, when admissible, and when not. *Pidcock*, 7 A. 299, 301, 66 S. E. 971; *Heitmann*, 6 A. 584, 65 S. E. 590; *Thompson*, 6 A. 604, 65 S. E. 599; *Hartman Stock Farm*, 8 A. 255, 68 S. E. 957; *Moore*, 107/199, 33 S. E. 65.

Subsequent, not added to deed by parol, though offered to explain consideration. *Huger*, 137/205, 73 S. E. 385.

Not added to written contract by parol, when. *Hartman Stock Farm*, 8 A. 255, 68 S. E. 957; *Ward*, 13 A. 152, 78 S. E. 1012; *Sikes*, 23 A. 721, 99 S. E. 310.

Delivery of contract on, admissibility of parol proof as to. *Pidcock*, 7 A. 299, 301, 66 S. E. 971.

Delivery of note on, or agreement not to use it until compliance with another agreement by the payee, parol to show. *Adams*, 17 A. 681, 87 S. E. 1099.

Connect writings, parol to, when inadmissible. *Sivell*, 119/171, 46 S. E. 67.

Consent decree, parol evidence of agreement and understanding at time entered, when admissible. *Roland*, 139/825, 78 S. E. 249.

Consideration of written contract expressing consideration, parol as to, when admissible. *Bing*, 5 A. 578, 63 S. E. 652. See *Sims*, 5 A. 855, 64 S. E. 99; *Lacey*, 5 A. 865, 64 S. E. 105; *Saul*, 6 A. 848, 65 S. E. 1065.

Of contract not specifying consideration, parol as to. *Hentz*, 8 A. 577, 70 S. E. 108.

For reservation in conveyance of land, want of, not shown by parol

evidence. *Read*, 139/499, 77 S. E. 642.

For selling land, parol as to, when not objectionable as varying written contract or concerning agreement within statute of frauds. *Central Ga. Power Co.*, 141/643, 81 S. E. 882.

Of written promise may be inquired into. *Bluthenthal*, 106/426, 32 S. E. 344.

Of written agreement not to appear as witness against a certain person or allow him to be prosecuted, parol as to. *Hays*, 15 A. 386, 83 S. E. 502.

Of deed, admissibility of parol evidence as to. *Harkless*, 115/350, 41 S. E. 634; *Martin*, 115/871, 42 S. E. 279; *Stone*, 111/45, 36 S. E. 321, 50 L. R. A. 356; *Jewell*, 109/246, 34 S. E. 387; *Hester*, 128/534, 58 S. E. 165; *Goette*, 128/180, 57 S. E. 808; *Thrower*, 144/372, 87 S. E. 301; *Pavlovski*, 134/705, 68 S. E. 511; *Carter*, 136/700, 71 S. E. 1047.

Of deed, parol admissible to show; and (where grantee has not taken possession) that it was intended only to secure debt. *Bashinski*, 133/89, 65 S. E. 152.

Of deed, agreement in parol as part of, not admissible. *L. & N. R. Co.*, 133/15, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Rule that consideration of contract is open to inquiry, not applied where the consideration expressed is mutual promises. *Kehoe*, 7 A. 236, 66 S. E. 547; *Wellmaker*, 123/201, 51 S. E. 436.

Parol evidence admissible to vary. *Bond*, 145/200, 88 S. E. 954.

Recital of, varied by testimony, if not amounting to a covenant. *Coles*, 148/21, 95 S. E. 963.

Of check, parol as to, when admissible. *Purcell*, 4 A. 253, 61 S. E. 138.

Different from that recited in note sued on, shown by parol. *Burke*, 106/328, 32 S. E. 134. Parol agreement as to consideration different from that expressed in written contract, not admitted. *Potts*, 5 A. 385, 63 S. E. 253.

Consideration—(Continued).

To show executory consideration different from that expressed in contract, not received. *Georgia Casualty Co.*, 23 A. 447, 98 S. E. 414.

Illegal or immoral, parol admissible to show. *Hentz*, 8 A. 577, 70 S. E. 108; *Luke*, 9 A. 116, 70 S. E. 596; *Roberts*, 9 A. 328, 71 S. E. 590; *Hines*, 9 A. 778, 72 S. E. 191; *McNamara*, 10 A. 669, 73 S. E. 1092.

Parol to contradict recital as to, admissibility of. *Witt*, 13 A. 400, 401, 79 S. E. 243.

Where contract is required to be in writing. *Strickland*, 14 A. 661, 82 S. E. 161.

Additional, to that expressed in mortgage, parol to show, not allowed. *Collins*, 18 A. 533, 89 S. E. 1054.

Of note inquired into; but not so as to change its character as a promise to pay. *Brewer*, 116/60, 42 S. E. 525. Parol as to consideration of note, admissibility of. *Ward*, 13 A. 152, 78 S. E. 1012; *Franklin*, 13 A. 463, 79 S. E. 366; *Tygart*, 8 A. 22, 68 S. E. 488; *Hawkins*, 101/145, 28 S. E. 632; *Brown*, 101/130, 28 S. E. 606; *Nunez Gin & Warehouse Co.*, 10 A. 350, 73 S. E. 432; *Wood*, 10 A. 737, 73 S. E. 1099; *Toller*, 12 A. 496, 77 S. E. 650; *Gibbs*, 17 A. 388, 390, 87 S. E. 155; *Prontaut*, 17 A. 495, 87 S. E. 716. When admissible and when not. *Rheney*, 22 A. 417, 418, 424, 96 S. E. 217; *Simmons*, 22 A. 358, 96 S. E. 9; *Lynchburg Shoe Co.*, 23 A. 186, 98 S. E. 107; *Sikes*, 23 A. 721, 99 S. E. 310 (overruling *Gibbs*, 17 A. 388, 87 S. E. 155). Note, reciting "value received." *Pidcock*, 7 A. 299, 66 S. E. 971; *Pope*, 7 A. 395, 66 S. E. 984; *Friedman*, 17 A. 677, 87 S. E. 1099; *Reviere*, 103/169, 29 S. E. 756. Note under seal. *Strickland*, 14 A. 661, 82 S. E. 161. Parol admissible to explain consideration of notes and show circumstances of their making. *Camp*, 143/393, 85 S. E. 196. To show that the actual consideration of a note was not the consideration expressed therein, not

admissible. *Krueger*, 22 A. 210, 95 S. E. 718.

Construction demanded by writings, parol to alter or modify, not received. *Brooks*, 118/677, 45 S. E. 485; *Ballard*, 118/918, 45 S. E. 711.

Contemporaneous parol agreement that parties signing bond as guarantors were not to be bound, not admissible. *Christopher*, 22 A. 707, 97 S. E. 97.

Not embraced in the writings, error in receiving, cured by subsequent written admissions. *Bluthenthal*, 108/810, 33 S. E. 996.

To vary writings; rule and exceptions to it. *Barrie*, 104/314, 30 S. E. 840; *Buck*, 104/660, 30 S. E. 872. See *Dooley*, 104/771, 31 S. E. 203.

To contradict written contract, no error in excluding. *Dolvin*, 131/301, 62 S. E. 198.

Not admissible to contradict writing, unless omitted by accident, fraud, or mistake. *Probasco*, 144/416, 87 S. E. 466. Not engrafted on written contract. *Berendt*, 120/228, 47 S. E. 595.

Inconsistent with writing, excluded. *Perry*, 103/136, 29 S. E. 703.

Contents of accessible paper, parol evidence of, properly excluded. *Wilson*, 139/171, 76 S. E. 998; *Starling*, 5 A. 171, 62 S. E. 993. Improperly admitted. *Kerr*, 105/655, 31 S. E. 739.

Of written notice, parol evidence of, not authorized by mere testimony that officer does not know what has become of it. *O'Neill Mfg. Co.*, 127/640, 56 S. E. 739. Not admissible without proper foundation. *Sheffield*, 3 A. 200, 59 S. E. 725.

Of writings in possession of accused, who does not produce them, parol as to, when admissible. *Moore*, 130/322, 60 S. E. 544; *Kinsey*, 12 A. 422, 77 S. E. 369; *Sellers*, 12 A. 687, 78 S. E. 196.

Of writings in evidence which correspond with it, error in admitting parol as to, harmless. *Allen*, 129/752, 59 S. E. 813.

Of promissory note or of indorsement, witness not allowed to state, but allowed to describe it by date and

amount, and to say he gave it. *Sasser*, 9 A. 178, 70 S. E. 980.

Of paper not shown to be lost or inaccessible, error in admitting secondary evidence as to. *Allen*, 129/752, 59 S. E. 813.

Of writing sent off for record and not returned, when parol as to, not received. *Fla. Coca Cola Co.*, 136/411, 71 S. E. 734.

Of written instrument, parol not admitted to show, where evidence as to loss or inaccessibility was insufficient. *Tilley*, 119/867, 47 S. E. 219.

Of letter, parol evidence of, when not admissible. *Bush*, 127/309, 56 S. E. 430, 9 Ann. Cas. 240.

Of lost or destroyed letter, shown by parol, when. *Johnson County Bank*, 9 A. 466, 71 S. E. 757. Of lost fi. fa. *Portwood*, 18 A. 502, 89 S. E. 591.

Parol not admissible where copy in evidence. *Shedden*, 110/461, 35 S. E. 707.

Parol inadmissible without first showing writing can not be produced. *Hutcherson*, 130/427, 60 S. E. 1000; *McHan*, 130/756, 61 S. E. 731.

Parol as to, inadmissible, even though received subject to being held of no probative value if contradicted by writing. *North Ga. Co.*, 130/113, 60 S. E. 258, 24 L. R. A. (N. S.) 235.

Parol, as to notes given in settlement of claim sued on, not received. *Brantley Co.*, 106/313, 32 S. E. 101.

Of lost interrogatories, parol as to, not received without account for the lost paper. *Trentham*, 118/530, 45 S. E. 421.

Of lost deed, parol as to, not allowed without evidence of its proper execution. *Dasher*, 102/830, 30 S. E. 544.

Of lost agreement, parol as to. *Stricklin*, 1 A. 141, 58 S. E. 215.

Of deed in hands of non-resident grantees not parties, parol as to, when not admissible. *McConnell*, 134/95, 67 S. E. 440.

Of lost or destroyed records, parol admitted to show. *Lewis*, 23 A. 647, 99 S. E. 147.

Of document, parol to prove, not admissible. Testimony susceptible of construction that the witness testified from recollection as refreshed by writing, admitted. *Albany Phosphate Co.*, 4 A. 781, 62 S. E. 533.

Parol evidence of what writing does not contain, as much forbidden as what it does. *Holliday*, 108/803, 34 S. E. 126.

When parol not admissible to prove what books of account or other writings contain or do not contain. *Aspinwall*, 109/437, 34 S. E. 568.

Of writing, parol as to, without proper foundation. *Stephens*, 104/241, 30 S. E. 807.

Contradiction, parol to explain, and remove ambiguity in case of conflict between separate writings, constituting contract, admitted. *Cable Co.*, 7 A. 435, 66 S. E. 1103.

Conversations before and when executing contract in writing, testimony of, properly excluded. *Thomason*, 139/341, 342, 77 S. E. 155.

Conveyance of land, parol testimony not admissible to show. *Leake*, 5 A. 104, 62 S. E. 279.

Conviction of crime; parol proof of, not allowed. *Morgan*, 17 A. 125, 86 S. E. 281; *Braxley*, 17 A. 197, 86 S. E. 425; *Phillips*, 18 A. 109, 88 S. E. 905.

Proper mode of proving, is by record of trial and conviction. *Wheeler*, 4 A. 325, 61 S. E. 409.

Copy admissible after proof of loss of original. *Woods*, 101/526, 28 S. E. 970.

Any one of papers executed in triplicate by same stroke of pen may be introduced as an original. *Bowman*, 19 A. 115, 117, 91 S. E. 215.

Carbon copy, not secondary evidence, but admitted as duplicate original. *Lewis*, 18 A. 181, 89 S. E. 177. See *Borders*, 18 A. 333, 89 S. E. 451; *American Tie Co.*, 18 A. 640, 90 S. E. 86.

Copy certified, not parol, is proper mode of proving contents of petition filed in court of record of another county. *Parker*, 123/441, 51 S. E. 465.

See Evidence, 5, catchwords, "Certified copy," "Copy."

Corporation. Parol, of acts of corporation and its officers, when admissible, and when not. *Caudell*, 140/713, 79 S. E. 776; *Fields*, 20 A. 102, 92 S. E. 653.

Parol, that directors acted, that corporation agreed, etc., when not admissible. *Bank of Garfield*, 138/799, 803, 76 S. E. 95.

As to charter, by-laws, and minutes of, not admitted. *Dawson Paper Shell Pecan Co.*, 19 A. 43, 90 S. E. 984.

Parol, to show what a person was officer of, when admissible. *Knight*, 11 A. 536, 75 S. E. 834.

Parol, of corporate transaction, where no minute-books or stock-books kept, or lost. *Garmany*, 124/876, 53 S. E. 69, 110 Am. St. R. 207. Not received before production of or account for minutes of the corporation. *Bank of Garfield*, 138/799, 76 S. E. 95.

Parol as to proceedings at meeting of, not admissible. *Childs*, 117/554, 43 S. E. 986.

Cotton, parol to show that a contract for the sale of a stated number of bales of, meant bales of 500 pounds each. *Hamby*, 14 A. 518, 81 S. E. 593.

Parol, to show cotton was credited on note, admitted where the disposition of the cotton was the matter under investigation. *McNorrill*, 121/78, 48 S. E. 680. To show customary meaning of "bale of cotton." *Matthews*, 23 A. 676, 99 S. E. 308.

Court proceedings collaterally in question, proved by records, not by parol. *Wilson*, 108/279, 33 S. E. 975.

Cover for forfeiture, penalty, or usury, parol to show that the writing is. *Lytle*, 122/459, 50 S. E. 402.

Custom, as affecting contract, parol to show. *Hamby*, 14 A. 515, 81 S. E. 593. When not admissible. *Cartersville Grocery Co.*, 17 A. 42, 86 S. E. 402. Parol to vary written contract; rule not infringed by testimony of business custom. *Beck*, 108/244, 33 S. E. 894.

Date of paper, parol proof allowed as to, when. *Cabaniss*, 8 A. 143, 68 S. E. 849; *Sasser*, 9 A. 178, 70 S. E. 980.

Presumed to be correct; presumption rebuttable by parol proof. *Mutual Fertilizer Co.*, 18 A. 495, 89 S. E. 602.

Of note, parol to show intention as to. *Leffler*, 1 A. 63, 57 S. E. 911.

Entered in public record, parol to show error in, admitted. *Dobbs*, 8 A. 735, 70 S. E. 101.

Debt of another, parol as to terms of promise to pay, not admitted. *Johanson*, 4 A. 547, 61 S. E. 1052; *Pidcock*, 14 A. 183, 80 S. E. 526.

Intended to be secured by mortgage or bill of sale, admissibility of parol as to. *Skinner*, 17 A. 511, 513, 87 S. E. 759.

Dedication of land by parol. *Ellis*, 138/181, 75 S. E. 99.

Deed absolute in form, parol to show limited purpose of. *Simpson Grocery Co.*, 148/410 (dissent, 413), 96 S. E. 872.

Recitals, secondary evidence of contents of lost and unrecorded execution under which deed was made by sheriff. *Patterson*, 126/479, 55 S. E. 175.

Recitals in, contradicted by parol, by stranger thereto. *Dickey*, 110/315, 35 S. E. 291.

Not true as to intention, shown by parol evidence in support of cross-action. *Sheppard*, 114/411, 40 S. E. 282.

Need not be exhibited to witness, in order to admit parol proof as to its consideration. *Harkless*, 115/350, 41 S. E. 634.

Consideration or intention of, when not impeached by parol. *Anderson*, 112/532, 37 S. E. 766.

Parol to explain, admissibility of. *Leverett*, 121/534, 49 S. E. 591; *Luttrell*, 121/700, 49 S. E. 691; *Ga. & Ala. Ry.*, 121/708, 49 S. E. 700; *McCall*, 121/723, 49 S. E. 722; *Oliver*, 121/838, 49 S. E. 743, 104 Am. St. R. 185.

Parol to vary terms of, not allowed. *Wells*, 107/6, 32 S. E. 669; *Lanier*, 7 A. 227, 66 S. E. 626.

Secondary evidence of, after proof of execution and delivery of lost original. *Drew*, 146/479, 91 S. E. 541.

Secondary evidence as to contents of. *Harkless*, 115/351, 41 S. E. 634; *Acme Brewing Co.*, 115/494, 499, 504, 42 S. E. 8; *Griffin*, 115/613, 41 S. E. 1003. What necessary to render admissible. *Garbutt Lumber Co.*, 111/821, 35 S. E. 686. Contents of inaccessible deed. *McConnell*, 134/95, 67 S. E. 440.

Parol testimony did not contradict. *Parrish*, 142/115, 82 S. E. 520.

Absolute on face; testimony competent that it was to secure debt existing and contemplated. *Wigge*, 147/446, 94 S. E. 556; *Hester*, 128/533, 58 S. E. 165. True where maker retains possession of land. *Mercer*, 136/632, 71 S. E. 1075; *Spencer*, 132/515, 64 S. E. 466; *Askew*, 129/325, 58 S. E. 854; *McNair*, 147/161, 93 S. E. 289; *Farmers Supply Co.*, 23 A. 161, 97 S. E. 864.

Absolute on face, when and by whom proved to have been intended merely as security for debt. *Lowe*, 141/380, 81 S. E. 230; *Berry*, 141/642, 81 S. E. 881; *Denton*, 120/1078, 48 S. E. 423.

Absolute, with possession delivered, not shown to be mere mortgage, if no issue of fraud; aliter if possession retained by vendor. *Pusser*, 132/284, 64 S. E. 75, 22 L. R. A. (N. S.) 571; *Walker*, 141/436, 81 S. E. 203.

Absolute on face, parol proof not received to qualify, by attaching trust. *L. & N. R. Co.*, 134/108, 67 S. E. 652.

Parol authority to alter, after delivery, or to fill blank therein, not admissible. *Boyd Lumber Co.*, 146/794, 92 S. E. 534.

Parol as to contents of. *Acme Brewing Co.*, 115/495, 503, 42 S. E. 8.

Parol evidence in aid of. *Huntress*, 116/355, 42 S. E. 513.

Parol that deed was not intended to become binding until the happening of

a future event, not admitted. *Williams*, 128/307, 57 S. E. 801.

Parol that defendant had sued plaintiff in trover for deeds, no error in rejecting. *Causey*, 143/8, 84 S. E. 58. Defense to suit on written contract, parol to support; rules compared and distinguished. *Pryor*, 134/289, 67 S. E. 654, 28 L. R. A. (N. S.) 267.

Definition of secondary evidence. *O'Connor*, 11 A. 248, 75 S. E. 110.

Delivery of promissory note, admissibility of parol testimony to disprove, or to show conditional delivery. *Reynolds*, 22 A. 164, 95 S. E. 763.

Of writing purporting to contain contract, when prima facie evidence of contract; admissibility of parol to rebut presumption. *Moore*, 107/201, 33 S. E. 65.

On written order, admissibility of oral testimony as to. *Hayes*, 18 A. 68, 88 S. E. 752.

Secondary evidence of contents of deed, not authorized without proof of delivery. *Smith*, 112/351, 37 S. E. 729.

Testimony of carrier's agent as to, not secondary. *Dunn*, 18 A. 95, 89 S. E. 170.

Deposit in bank shown by parol proof. *American Trust & Co.*, 18 A. 610, 89 S. E. 1095; *Turner*, 18 A. 653, 90 S. E. 225.

Description in deed, extrinsic evidence to aid. *Parker*, 101/161, 28 S. E. 681; *Horton*, 117/72, 43 S. E. 786; *Crawford*, 122/816, 50 S. E. 958; *Bennett*, 126/414, 55 S. E. 177; *Simmons*, 138/605, 75 S. E. 671; *Stringer*, 141/403, 81 S. E. 194; *Lyle*, 141/618, 81 S. E. 867; *Mosher*, 141/557, 81 S. E. 852; *Clark*, 141/704, 82 S. E. 21, 53 L. R. A. (N. S.) 317; *Davis*, 143/99, 84 S. E. 426; *Sexton*, 146/685, 92 S. E. 217; *Hilliard*, 147/15, 92 S. E. 634; *Callaway*, 147/17, 92 S. E. 538; *Avera*, 147/24, 92 S. E. 533; *Boney*, 147/30, 92 S. E. 636; *Esteve*, 10 A. 286, 73 S. E. 534; *Cherry Lake Co.*, 10 A. 339, 73 S. E. 610; *Balchin*, 10 A. 434, 73 S. E. 613.

Applied to subject-matter by evidence. *Shackelford*, 129/795, 9 S. E. 772; *Haley*, 142/390, 82 S. E. 1058; *Fletcher*, 20 A. 653, 93 S. E. 313; *Ballew*, 16 A. 149, 84 S. E. 597; *Parrish*, 142/115, 82 S. E. 520; *Hawkins*, 132/266, 271, 63 S. E. 852, 131 Am. St. R. 190; *Glover*, 132/797, 65 S. E. 64; *Sizemore*, 130/666, 61 S. E. 536; *Singleton*, 130/717, 61 S. E. 722; *Allen*, 113/523, 38 S. E. 975.

Of land sold, insufficient, extrinsic evidence inadmissible to prove. *Gatins*, 104/389, 30 S. E. 876.

Wanting, not supplied by parol. *Douglass*, 110/159, 35 S. E. 339.

Difference in, when explainable by parol. *Rucker*, 114/13, 39 S. E. 902.

Of personalty in deed of conveyance, too uncertain, not aided by parol. *Ferguson*, 124/669, 52 S. E. 886.

Sufficient to identify land, and when mutual mistake in lot number will not defeat recovery on contract. *Tyler*, 120/897, 48 S. E. 328. May be aided by parol, in mortgage or conditional sale of chattels. *A. S. Thomas Co.*, 120/879, 48 S. E. 333; *International Harvester Co.*, 13 A. 1, 78 S. E. 770; *Reynolds*, 20 A. 50, 92 S. E. 389; *Johnson*, 119/196, 45 S. E. 992, 100 Am. St. R. 166. Parol to correct misdescription in mortgage of debt secured (bond or note), admissible. *Emerson*, 130/100, 60 S. E. 255.

Of oxen, sufficient to admit mortgage. Applied to subject by aid of evidence. *Reeves*, 133/835, 67 S. E. 82.

Mortgage not void for defective description; aided by extrinsic testimony. *Jones*, 135/60, 68 S. E. 788.

In devise, extrinsic evidence to aid. *Bowen*, 13/570, 69 S. E. 1115.

Of land, applied by evidence; deed not void for want of sufficient description. *Fuller*, 137/66, 72 S. E. 504.

Of land, ambiguous and conflicting, admissibility of testimony as to. *Pelham*, 137/39, 72 S. E. 417.

Of land, ambiguous, adjustable to boundaries by parol. *Napier*, 137/242,

73 S. E. 3, 38 L. R. A. (N. S.) 91, Ann. Cas. 1013A, 1013.

Adjusted to land conveyed, by parol. When not admissible to control effect of deed to certain land. *Thompson*, 137/308, 73 S. E. 640.

Of personalty, in contract of conditional sale, when aided by parol. *Clark*, 137/324, 73 S. E. 580.

Sufficient in bond for title, aided by parol. *Clover*, 140/128, 78 S. E. 714.

Held not too vague and indefinite to be applied to subject by extrinsic evidence. *Pearson*, 139/453, 77 S. E. 387; *Bush*, 142/157, 82 S. E. 530; *Glover*, 142/862, 83 S. E. 939.

Of land, when not void for uncertainty; and when applied to subject by extrinsic evidence. *Bunger*, 142/488, 83 S. E. 200, Ann. Cas. 1916C, 173.

Entry of levy on land, not so indefinite as not to be applied to subject by extrinsic evidence. *Humphrey*, 143/704, 85 S. E. 830.

Of land conveyed, when deed invalid for indefiniteness in. When not too indefinite to be aided by aliunde evidence. *Marshall*, 143/526, 85 S. E. 691.

Of land set apart as year's support, applied to subject-matter by extraneous evidence. *Palmer*, 141/61, 80 S. E. 322. Too indefinite to be aided by parol testimony. *Beavers*, 144/231, 232, 86 S. E. 1089.

Of land, sufficiency of; and when aided by evidence. *Williams*, 133/547, 66 S. E. 263; *Reeves*, 133/835, 836, 67 S. E. 82; *Hancock*, 133/734, 66 S. E. 949. Compare *Hollywood Cemetery Co.*, 133/271, 65 S. E. 777; *Crosby*, 133/560, 66 S. E. 897; *Smith*, 133/790, 66 S. E. 1086; *King*, 145/65, 88 S. E. 960; *Morris*, 145/562, 89 S. E. 704.

Evidence sufficient to define area covered by deed. *Roberts*, 146/495, 91 S. E. 675.

In deed, not too indefinite to be made certain by parol. *Brice*, 118/128, 44 S. E. 843; *McMillan*, 147/118, 93

S. E. 81; *Perkins*, 147/122, 92 S. E. 875.

Of land, too indefinite to be aided by parol evidence. *Southern Cotton Oil Co.*, 147/442, 92 S. E. 553; *Barnes*, 147/478, 94 S. E. 564; *Powell*, 12 A. 350, 77 S. E. 183; *Mims*, 19 A. 55, 90 S. E. 1035.

Sufficiently certain if it furnish key to identification. Aided by testimony. *Swint*, 147/467, 94 S. E. 571; cf. *Barnes*, 147/478, 94 S. E. 564; and see *McIntosh*, 148/273, 96 S. E. 387; *Hayes*, 148/700, 98 S. E. 345; *Boyd*, 148/839, 98 S. E. 490. Too indefinite for aid by extrinsic evidence. Key lost by added words. *Jackson*, 148/314, 96 S. E. 630.

Of property to be sold, sufficiently certain, when by aid of parol evidence its precise location capable of ascertainment, and its identity established. *McLean*, 3 A. 660, 60 S. E. 332.

Of document, by parol testimony, when admissible. *Sasser*, 9 A. 178, 70 S. E. 980; *Cabaniss*, 8 A. 130, 68 S. E. 849.

In mortgage aided by parol, so as to point out and identify property. *Read Co.*, 1 A. 420, 58 S. E. 122; *Nussbaum*, 9 A. 57, 59, 70 S. E. 259.

Parol to explain meaning of terms of, admissible, when. *Mountain City Mill Co.*, 11 A. 486, 75 S. E. 823.

Admissibility of parol explanation of. *Kirby Planing-Mill Co.*, 11 A. 645, 75 S. E. 1059.

Different contract from that signed (referring to terms printed on other page), parol to prove, when not received. *Dotson*, 140/162, 78 S. E. 801.

Discretion in excluding copy deeds, for want of sufficient showing as to loss of originals, when not abused. *Cox*, 118/414, 45 S. E. 401.

As to admission of secondary evidence, no error in exercise of. *Florida Coca Cola Co.*, 136/411, 71 S. E. 734.

Disprove contention that obligation not expressed in the writing was met, parol admissible to. *Williams*, 124/913, 53 S. E. 564. Exception to parol-evidence

rule, where purpose is to disprove existence of contract, and not to contradict it. *Thomason*, 9 A. 349, 71 S. E. 596.

Disqualification of ordinary, not entered of record, shown by parol; and transcript admitted. *McAfee*, 138/403, 75 S. E. 319.

Division of land by purchasers, each taking possession of part assigned to him, parol evidence of, admissible. *Roberts*, 136/790, 72 S. E. 239.

Docket entries of justice's court as to service are not secondary. *Battle*, 107/130, 32 S. E. 838.

Doubt as to admissibility resolved in favor of parol. *Albany Phosphate Co.*, 4 A. 782, 62 S. E. 533.

Dower admeasured and return unrecorded; parol evidence not admissible in collateral proceeding. *Wood*, 145/256, 88 S. E. 980.

Draft, parol to show that acceptance of, was conditional, not admissible. *Dixon*, 23 A. 279, 98 S. E. 112.

Parol evidence of agreement between payee of, and collecting bank, as to disposition of proceeds. *Goswick*, 143/309, 85 S. E. 112.

Duplicate original not treated as secondary. *Lewis*, 18 A. 181, 89 S. E. 177; *Savannah Bank*, 6 A. 278, 65 S. E. 35.

Duties of one designated in contract as "local manager," parol as to. *Walker*, 6 A. 519, 65 S. E. 301.

Dying declaration committed to writing by another, parol as to, admitted. *Mixon*, 7 A. 808, 68 S. E. 315. Oral dying declaration not rendered inadmissible by subsequent declaration reduced to writing. *Odom*, 13 A. 687, 79 S. E. 858.

Election primary, parol proof of. *Lepinsky*, 7 A. 285, 66 S. E. 965.

Of officer can not be proved by parol, nor by producing "precinct returns of election," made by managers. *Fletcher*, 111/253, 36 S. E. 646.

Entire contract, parol to vary written part of, not received in absence of fraud accident, or mistake. *Johnson*, 137/150, 72 S. E. 915.

Error in admitting parol testimony, to vary written contract, immaterial, in view of rescission of the contract. *Stewart*, 20 A. 488, 93 S. E. 116.

Harmless, in admitting parol. *Avery*, 17 A. 458, 87 S. E. 698. **Harmless, in view of admissions in pleadings.** *Boston Oil Co., &c.*, 21 A. 685, 94 S. E. 1041.

In admitting parol evidence as to contents of writing, not cured by statement of counsel, without ruling by judge. *Livingston*, 17 A. 136, 86 S. E. 449.

Harmless, in admitting parol testimony as to contents of writings in evidence which correspond with it. *Allen*, 129/752, 59 S. E. 813.

In admitting secondary evidence, cured by introduction of primary evidence. *G., F. & A. Ry. Co.*, 12 A. 181, 76 S. E. 1063. **By later admission of the fact.** *McCoy*, 124/218, 23 S. E. 434. **By later proof.** *Ray*, 110/818, 36 S. E. 242.

Escrow, admissibility of parol proof that instrument was to be held as. *Pidcock*, 7 A. 299, 301, 66 S. E. 971.

Established copy takes place of lost original record. But contents of exhibits (copies) attached to pleadings not received without proof of loss of originals. *Keens*, 136/194, 71 S. E. 141.

Exception to overruling of objection that evidence was secondary should show the existence of better evidence. *Brooke*, 119/947, 47 S. E. 341. **Preliminary evidence, offered to show inaccessibility of primary evidence, should be set out in ground of motion for new trial, as to refusal to admit secondary.** *Foreman*, 8 A. 822, 70 S. E. 158. See *Miliken*, 8 A. 497, 69 S. E. 915.

Execution, parol as to contents of, when admissible. *Patterson*, 126/487, 55 S. E. 175. **Parol to show levy, or discharge or transfer of fl. fa., not admitted.** *Walton*, 11 A. 160, 74 S. E. 1006.

Execution of writing having attesting witnesses, error in receiving secondary evidence of. *Lamb*, 143/180, 84 S. E. 439.

Family, parol agreement of, as to purchase and ownership of personal property, enforceable. Aliter as to land. *Jones*, 138/730, 75 S. E. 1129.

Filing and withdrawal of return, testimony of, admitted over objection that entry of filing was best. *Am. S. Co.*, 2 A. 644, 58 S. E. 1116.

Shown by parol proof. *Staton*, 14 A. 7, 80 S. E. 23; *Staton*, 15 A. 137, 82 S. E. 784.

Of plea not marked "filed," parol as to. *Sanders*, 121/302, 48 S. E. 946.

Clerk's entry of, not exclusive, on foreclosure proceeding. *Wynne*, 101/808, 28 S. E. 1000.

Evidence as to time of, where no entry of, properly admitted here. *Buckwalter*, 115/484, 41 S. E. 1010.

Fixtures on land conveyed, parol to show reservation of title to, not admissible. *Lanier*, 7 A. 227, 66 S. E. 626.

Extrinsic agreement, that trade fixtures not to be covered by mortgage on realty, shown by parol. *Richards*, 116/382, 42 S. E. 715.

Parol agreement that certain fixtures should not pass by a conveyance of the realty, whether admissible. *Wolf*, 123/403, 51 S. E. 335.

Foundation for parol proof as to contents of writing, not laid; rejection proper. *L. & N. R. Co.*, 12 A. 576, 77 S. E. 913; *Sheffield*, 3 A. 200, 59 S. E. 725. **Applied to copy-letter attached to interrogatories.** *N. E. Mfg. Co.*, 120/1010, 48 S. E. 396. **To prove contents or non-contents of books or private writings.** *Baldwin Bank*, 141/181, 86 S. E. 538. **Secondary evidence of notes and mortgages, not received without reason shown for not producing originals.** *Kelly*, 147/741, 95 S. E. 287.

Evidence as to search for original, here insufficient. *Lott*, 113/640, 39 S. E. 70. **Foundation insufficient.** *Crummey*, 114/746, 40 S. E. 765. **Sufficient foundation.** *Ginn*, 142/421, 83 S. E. 118. **Proper foundation laid for secondary evidence of mortgage.** *Sims*, 2 A. 466, 58 S. E. 693. **Sufficient for introducing secondary evidence of**

contents of written release. *Conant*, 120/568, 48 S. E. 234. For secondary evidence of deed. *Shirley*, 105/504, 31 S. E. 105. Discretion of court. *Cowart*, 137/586, 73 S. E. 822, Ann. Cas. 1913A, 932.

Fraud, accident, or mistake shown by parol. *Pryor*, 134/289, 67 S. E. 654, 28 L. R. A. (N. S.) 267.

Parol testimony to prove. *Chicago Co.*, 139/816, 78 S. E. 244.

Parol to establish plea of, admissible. *Crooker*, 3 A. 190, 59 S. E. 722; *Williams*, 3 A. 756, 60 S. E. 372. Compare *Branan*, 3 A. 586, 60 S. E. 325.

Parol to show contract was procured by, admissible. *Pollock*, 15 A. 1, 82 S. E. 381; *State Historical Asso.*, 6 A. 560, 65 S. E. 293; *Loyless*, 10 A. 660, 74 S. E. 90.

In procuring deed, shown by parol. *Pavlovski*, 134/704, 68 S. E. 511; *Jones*, 134/857, 68 S. E. 729, 137 Am. St. R. 276.

Inducing written contract, renders inapplicable the rule that parol testimony shall not be received to vary such a contract. *Mizell Live Stock Co.*, 10 A. 362, 73 S. E. 410; *Chandler-Blackstad Co.*, 10 A. 383, 73 S. E. 413.

Inducing signature to promissory note, parol evidence admissible to show. *Brown*, 136/584, 71 S. E. 802.

When terms of deed not changed by evidence of. *Bell*, 133/9, 65 S. E. 90.

In misrepresentations of contents of writing, admissibility of parol evidence as to. *Hayes*, 143/183, 84 S. E. 442.

Parol admissible to show fraudulent representation as to contents of instrument, to one signing without reading, when. *Thomason*, 9 A. 349, 71 S. E. 596.

When parol not admissible to show that signing was induced by false representation as to contents. *Tracy*, 5 A. 392, 63 S. E. 233.

Parol admitted to show that one who signed note, apparently as maker, was fraudulently induced to do so, by representation that he was signing as witness. *Barco*, 5 A. 372, 63 S. E. 224.

Parol as to real contract, where contents of written instrument were misrepresented to signer. *Towns*, 16 A. 300, 306, 85 S. E. 274.

Parol, of fraudulent misrepresentation made to induce entry into contract, when admissible. *Turner*, 2 A. 57, 58 S. E. 310.

Parol to show false representations which resulted in written contract, admitted when. *Summerour*, 119/1, 45 S. E. 713; *Harrison*, 119/8, 45 S. E. 730; *McCrary*, 119/876, 47 S. E. 341.

Promise as to something to be done in the future, not such fraud as would open written contract to parol addition. *Southern Fertilizer Co.*, 17 A. 642, 87 S. E. 911; *Chewning*, 17 A. 768, 88 S. E. 593.

Future delivery, in sale of cotton for, parol to engraft upon an unambiguous written contract an agreement tending to destroy its legality, not admissible. *Anderson*, 16 A. 447, 85 S. E. 606.

Gift by deed, testimony of parol agreement made when accepting, excluded on objection of donee. *L. & N. R. Co.*, 132/174, 63 S. E. 898. Parol to show that deed reciting valuable consideration was a deed of gift, admissible. *American Ins. Co.*, 6 A. 736, 65 S. E. 787.

Guaranty, parol to show whether written contract was one of, or of suretyship. *McClain*, 17 A. 648, 87 S. E. 1090. Parol to show that one signing contract in form of guaranty, reciting consideration, received no independent consideration, and was merely surety, admissible. *Maril*, 12 A. 41, 76 S. E. 773; *Baggs*, 11 A. 173, 74 S. E. 937.

Higher and better evidence, when "carbon" copy of notice not excluded on ground of. *Anderson*, 141/840, 82 S. E. 246.

Objection on account of, when not sustained. *Kinard*, 1 A. 146, 58 S. E. 263; *Mahan*, 1 A. 534, 58 S. E. 265; *Mason*, 1 A. 534, 58 S. E. 139.

Proper exclusion of testimony of provision of a will. *Hunt*, 140/158, 78 S. E. 805. Highest evidence of terms

of contract. *Pope*, 1 A. 184, 57 S. E. 949.

Homestead property, parol to show land was received in exchange for, and afterwards treated as homestead, admitted. *Taylor*, 109/333, 34 S. E. 674.

Identification, by parol, of property described in writing. *Alabama Construction Co.*, 131/365, 62 S. E. 160; *McLean*, 3 A. 660, 60 S. E. 332; *Wellmaker*, 123/204, 51 S. E. 436; *Todd*, 17 A. 98, 86 S. E. 255. See *Jones*, 17 A. 834, 88 S. E. 719.

Of property mentioned in mortgage. *Read Co.*, 1 A. 420, 58 S. E. 122; *Askew*, 23 A. 772, 99 S. E. 537; *Johnson*, 119/196, 45 S. E. 992, 100 Am. St. R. 166. In mortgage or conditional bill of sale. *A. S. Thomas Co.*, 120/878, 48 S. E. 333.

Of land sold. *King*, 145/65, 88 S. E. 960.

Of land, where not definitely described in contract. *Ballew*, 16 A. 149, 84 S. E. 597.

Of personalty as included in contract of conditional sale. *Clark*, 137/324, 73 S. E. 580.

Of persons or property referred to in a written instrument. *McLamb*, 4 A. 553, 62 S. E. 107; *Charles*, 4 A. 739, 62 S. E. 493.

Of instrument referred to in promise to revive barred debt. *Duncan*, 14 A. 306, 80 S. E. 726.

Of subject-matter of written contract, where ambiguous. *Hartwell Grocery Co.*, 8 A. 727, 70 S. E. 48; *Kirby Planing-Mill Co.*, 11 A. 645, 75 S. E. 1059.

Illegal and secondary evidence, distinguished. *Patton*, 124/974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

Impeachment of witness by showing he committed bigamy, parol not admissible for. *Green*, 125/742, 54 S. E. 724. Parol of testimony given at court of inquiry, for purpose of impeachment. *Summerlin*, 130/794, 61 S. E. 849.

Inaccessibility of primary evidence to party's diligence, addressed to court's discretion. *Brookman*, 148/722, 98 S. E. 543. Written evidence of contract held without the State, oral evidence received to show its terms. *Stewart*, 138/797, 76 S. E. 352. Original not inaccessible when in the possession of a party to the case. *Crumm*, 11 A. 205, 75 S. E. 108. Secondary evidence admitted as to contents of paper delivered to opposite party, who, on a former trial, testified that it was destroyed. *Hicks*, 12 A. 661, 78 S. E. 133. Secondary evidence as to contents of writing in the possession of opposite party and out of the State, not allowed, when no notice to produce. *Cutter-Tower Co.*, 5 A. 294, 63 S. E. 58. Secondary, admissible, as to contents of writings in possession of one not a party and beyond jurisdiction. *Miller*, 103/553, 29 S. E. 467. Secondary, as to writing in the possession of the opposite party or out of the State, admitted, when. *Gary*, 7 A. 501, 67 S. E. 207. Secondary, as to writing in custody of accused, admissible for prosecution. *Thomas*, 19 A. 104, 91 S. E. 247; *Nalley*, 11 A. 15, 74 S. E. 567.

Indictment and minutes of court were not varied by parol, as to persons who served as grand jurors. *Bexley*, 141/1, 80 S. E. 314. Parol to explain terms of description in indictment, admissible. *Wreen*, 12 A. 694, 78 S. E. 202.

Indorsement in blank, may be explained by parol. *West Yellow Pine Co.*, 9 A. 350, 71 S. E. 504; *Proctor*, 21 A. 617, 94 S. E. 821; *Willingham*, 129/841, 60 S. E. 186.

Of note was for a special purpose, parol to show, admissible. *Goette*, 128/180, 57 S. E. 308.

Made on note before delivery to payee, parol explanation of, when admissible. *Atkinson*, 103/508, 30 S. E. 599.

Parol to show different ownership of note from that shown by, not ad-

mitted. **Hester**, 128/531, 538, 58 S. E. 165.

Whether parol admissible to show that indorser was such merely for accommodation. **Philips**, 144/704, 87 S. E. 1059.

Parol that indorsers of check were merely accommodation indorsers, or joint makers, admissible. **James**, 7 A. 707, 67 S. E. 1125.

Rule permitting parol proof that indorsement of note was merely for accommodation; not applicable to indorsement here. **Phillips**, 20 A. 489, 93 S. E. 115.

To show that indorsement in blank was intended as indorsement with recourse, not admissible. **Matthews**, 13 A. 412, 79 S. E. 227. To show that indorsement in blank was intended only to pass title, not to render indorser liable, admitted. **Cowart**, 18 A. 512, 89 S. E. 1101.

Parol that one signing as indorser was surety, admissible. **Daniel**, 11 A. 789, 76 S. E. 166.

Parol to vary contract shown by general indorsement of note, not admitted. **Kerr**, 13 A. 9, 78 S. E. 682.

Injunction, when no error in refusing oral testimony on hearing for. **Hester**, 130/460, 60 S. E. 1053.

Insurance policy, parol that lodge did not issue, admitted. **Hester**, 8 A. 382, 69 S. E. 31.

Parol to explain receipt for first premium on, whether admissible. **Williams**, 8 A. 306, 68 S. E. 1082.

Parol to vary terms of, not admitted. **Wheeler**, 129/240, 58 S. E. 709.

Proof of loss under, showing no liability, not aided by parol. **Cannon**, 110/564, 35 S. E. 775, 78 Am. St. R. 124.

Parol that an insurance policy was issued and sent out merely for examination, admissible. **Lumber Ins. Co.**, 16 A. 756, 86 S. E. 60.

Parol as affecting insurance contract. **Delaware Ins. Co.**, 126/386, 55 S. E. 330, 7 Ann. Cas. 1134. As affecting

life-insurance policy. **Hamilton**, 109/387, 34 S. E. 593.

Intention shown by parol. **Dwelle**, 106/486, 32 S. E. 593; **Luke**, 9 A. 120, 70 S. E. 596; **Andrews**, 145/826, 90 S. E. 59.

Not as purported, parol not admissible to impeach contract by showing. **Barfield**, 146/824, 826, 92 S. E. 633.

Of parties to insurance contract, parol evidence to show, was not prejudicial. **Corporation of the London Assurance**, 106/538, 32 S. E. 650.

Of parties to unambiguous written contract not shown by extrinsic parol proof. **Mendel**, 136/442, 71 S. E. 753; **Crawford**, 143/405, 85 S. E. 127; **Pritchett**, 143/802, 85 S. E. 1000; **McWhorter**, 123/251, 51 S. E. 288.

Of parties to deed, parol to show, when admissible. **Nelson**, 129/36, 58 S. E. 697.

Parol, as to circumstances illustrating, in case of doubt as to meaning of covenant, admissible. **Reidville & Co.**, 13 A. 362, 79 S. E. 187.

Different from that expressed by deed, shown by parol, to support equitable cross-action. **Sheppard**, 114/411, 40 S. E. 282.

Of testator, parol to show, inadmissible, where will unambiguous. **Cochran**, 110/762, 36 S. E. 71. Testator's sayings indicating intent, parol as to, not admissible, where terms of will unambiguous. **Hanvy**, 140/691, 79 S. E. 772.

Of grantor, parol not received to explain, deed being unambiguous. **Terrell**, 108/655, 34 S. E. 345. Parol not admissible to show that grantor did not mean to transfer rights but to reserve them. **Read**, 139/499, 77 S. E. 642.

In unambiguous lease of timber, parol inadmissible to show. **Carter**, 106/280, 31 S. E. 61.

Interest, parol that debt evidenced by bank check should not bear, inadmissible. **Haynes**, 112/668, 37 S. E. 990, 81 Am. St. R. 72. To show higher rate of interest than seven per cent., not admissible. **Ver Nooy**, 17 A. 233, 86

S. E. 456. Parol not admissible to enlarge subsequent written agreement as to rate of interest payable. *Strickland*, 141/566, 577, 81 S. E. 886.

Judgment, relation of, with deed to land to secure the debt, shown by extraneous evidence. *Anderson*, 147/104, 106, 92 S. E. 934; *Gillespie*, 145/490, 89 S. E. 519.

Not shown by parol. *Duke*, 13 A. 708, 79 S. E. 861; *Wood*, 145/256, 88 S. E. 980.

Parol evidence admissible to show that matter apparently covered by, was not passed on. *Dix*, 132/631, 64 S. E. 790.

Parol evidence to show contents of, inadmissible. *Cody*, 103/789, 30 S. E. 281.

Unsatisfied, parol proof as to what record shows as to, inadmissible. *Vizard*, 1117/69, 43 S. E. 426.

Parol to connect execution with. *Smith*, 107/803, 33 S. E. 684.

Parol to show subject-matter of. *Moore*, 126/738, 55 S. E. 950.

Estoppel by, when extrinsic evidence admissible in support of plea of. *Irvin*, 127/240, 55 S. E. 1037, 9 Ann. Cas. 341. Parol as to matters involved in former suit, when admissible, on question as to estoppel by judgment. *Halliday*, 128/649, 58 S. E. 169; *Harris*, 129/241, 58 S. E. 831.

Parol no basis for amendment of, when. *Rutland*, 14 A. 82 S. E. 293.

Justice's court, time of holding, admissibility of parol proof as to, where judgment attacked. *Shearouse*, 117/426, 43 S. E. 718. See *Bacon*, 117/497, 499, 43 S. E. 689.

Inadmissibility of parol evidence to show appearance and pleading. *Shearouse*, 117/426, 43 S. E. 718. See *Bacon*, 117/497, 499, 43 S. E. 689.

Knowledge, testimony from, when not objectionable because book is best evidence. *Cox*, 3 A. 609, 60 S. E. 283.

Land, parol to establish contract for sale of, excluded. *Grantham*, 136/17, 70 S. E. 790.

Parol that ancestor paid for, and took deed, when admissible. *Grantham*, 136/17, 70 S. E. 790.

Parol that sale of, was by the acre, where bond for title was for a definite lot of so many acres more or less, not admissible. *Walker*, 112/413, 37 S., E. 749.

Line, parol agreement as to, admissible, when. *Elkins*, 20 A. 737, 93 S. E. 236. Parol inadmissible to vary written contract as to land lines. *Weaver*, 114/166, 39 S. E. 874.

Parol authority to sell. *Williams*, 103/805, 30 S. E. 644.

Parol contract for sale of, subsequent to written contract sued on, inadmissible. *Perry*, 103/136, 29 S. E. 703.

Parol contract for sale of; rule as to proof required. *Redman*, 129/435, 59 S. E. 212; *Warren*, 123/243, 51 S. E. 302.

Parol agreement to convey land bought at sheriff's sale, when enforceable. *Holmes*, 106/860, 33 S. E. 216.

Parol to show that land levied on was that described in fi. fa., admitted. *Johnson*, 121/767, 49 S. E. 757.

Parol that land had been deeded, not 729.

Letter, admissibility of parol proof as to. *Cashin*, 18 A. 90, 88 S. E. 996.

Parol proof of contents of. *Dean*, 13 A. 258, 79 S. E. 86; *Harrison*, 20 A. 12, 92 S. E. 388; 95 S. E. 630. Letters the best evidence of their contents. *Garmany*, 124/882, 53 S. E. 669, 110 Am. St. R. 207.

Parol explanation of, by the writer, admitted. *Webb*, 22 A. 39, 95 S. E. 471.

Secondary evidence as to contents of. *Thomas*, 19 A. 104, 91 S. E. 247; *Harrison*, 20 A. 12, 92 S. E. 388, 95 S. E. 630. Admissible, on proof here. *Dean*, 13 A. 258, 79 S. E. 86.

Secondary evidence of contents of, not received if no showing of loss. *Franklin*, 122/605, 50 S. E. 342. Secondary, as to contents of lost or de-

stroyed letter, admissible, when. *Johnson County Bank*, 9 A. 466, 72 S. E. 757.

Inadmissibility of parol evidence as to, where no foundation laid. *Bush*, 127/309, 56 S. E. 430, 9 Ann. Cas. 240.

Parol to show that oral contract (as to which statute of frauds was not pleaded) was not the same as it was stated to be in letter of one of the parties to the other, admissible. *Huxford*, 119/610, 46 S. E. 852.

Parol as to writing letters, when not admissible without accounting for them, *Slaughter*, 127/749, 57 S. E. 69, 27 L. R. A. (N. S.) 1.

Levy, not shown by parol proof. *Walton*, 11 A. 160, 74 S. E. 1006.

Unproductive, parol evidence to show. *Perryman*, 103/555, 29 S. E. 708.

Parol testimony not received to aid officer's return, without offer to amend. *Tuells*, 113/696, 39 S. E. 455.

Lien of judgment, shown by aliunde proof to be special as to certain land. *Terrell*, 113/1087, 39 S. E. 476; *Spradlin*, 146/396, 91 S. E. 409.

Litigation, parol testimony as to, not admissible. *Kennedy*, 18 A. 150, 88 S. E. 1000.

Loan for which check was given, parol to show amount of, admitted. *Morris*, 14 A. 729, 82 S. E. 314.

Location of telephone exchange limit, admissibility of parol evidence to show. *Southern Bell Tel. Co.* 139/567, 77 S. E. 382.

Lost or destroyed will; material for proof on establishment of copy; presumption and rebuttal. *Wood*, 147/571, 94 S. E. 1021.

Records, proof of contents. *Lewis*, 23 A. 647, 99 S. E. 147.

Deed; certified copy from record admissible; not the record itself. *Peeples*, 140/610, 79 S. E. 466; *Flint River Lumber Co.*, 134/627, 68 S. E. 436; *Cannon*, 136/167, 71 S. E. 142, Ann. Cas. 1912C, 39; *Lee*, 138/646, 75 S. E. 1051.

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Deed; admissibility of secondary evidence in action to establish copy. *Orr*, 145/137, 88 S. E. 669.

Deed; copy not admissible before showing previous existence of original. *Carrie*, 145/184, 88 S. E. 949.

Compared copy admissible, though original illegality recorded. *Landrum*, 145/307, 89 S. E. 201.

Deed, preliminary proof not sufficient to admit copy of. *Bower*, 126/35, 54 S. E. 918.

Deed, what necessary to render admissible secondary evidence as to contents of. *Garbutt Lumber Co.*, 111/821, 85 S. E. 686.

Fi. fa., parol proof of contents. *Portwood*, 18 A. 502, 89 S. E. 591.

Mortgage, admissibility of secondary proof as to. *James*, 10 A. 266, 73 S. E. 407.

Muniment of title, parol evidence of, has probative value of original. *Houston*, 124/417, 52 S. E. 757.

Original note sued on, correct copy of, attached as exhibit, proved, by parol. *Haug*, 101/372, 29 S. E. 44.

Papers; admissibility of certified copy of established copy. *Bell*, 109/211, 84 S. E. 339.

Paper, competency of evidence on proceeding to establish. *Nixon*, 137/516, 73 S. E. 747.

Paper, establishment of; and discretion as to sufficiency of foundation for introducing copy. *Smith*, 3 A. 199, 59 S. E. 593.

Paper, former indictment admitted to show contents of. *Thompson*, 120/132, 47 S. E. 566.

Paper or record, admissibility of copy. *Keen*, 136/194, 71 S. E. 141. Loss or absence of inquest papers sufficiently shown to admit proved copy to impeach witness. *Summerlin*, 130/791, 61 S. E. 849.

Paper not shown to be, by testimony that officer does not know what has become of it. *O'Neill*, 127/640, 56 S. E. 739. Testimony that a paper "is lost," merely a conclusion, not authorizing

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secondary evidence as to its contents. **Underdonk**, 17 A. 419, 87 S. E. 680.

Paper, parol evidence of contents of. **Stricklin**, 1 A. 141, 58 S. E. 215; **Patterson**, 126/478, 55 S. E. 175.

Paper; proof of execution and contents, how made. **Proctor & Gamble Co.**, 128/617, 57 S. E. 879.

Paper, secondary evidence of contents of. **Turner**, 127/338, 56 S. E. 483. Loss of written contract sufficiently shown to admit secondary evidence of its contents. **Probasco**, 144/416, 87 S. E. 466.

Paper, whether sufficient diligence exercised in searching for, rests in discretion of court. **Saulsbury**, 135/182, 69 S. E. 20.

Proof not sufficient to show loss. **Denney**, 2 A. 146, 58 S. E. 318.

Tax fi. fa., secondary evidence as to contents of, what admissible. **Hilton**, 107/821, 33 S. E. 715.

Verdict, parol evidence of, where no record. **Adams**, 148/339, 96 S. E. 858.

Writing, genuineness of signature to; testimony offered held incompetent. **Gress Co.**, 120/751, 752, 48 S. E. 115.

Writings, witness unable to state contents literally, allowed to state substance. **Campbell**, 123/533, 51 S. E. 644.

Deed; testimony by grantee of its execution and delivery to him, when competent. **Roberts**, 136/901, 72 S. E. 234.

Original deed, secondary evidence of contents of. **Drew**, 146/479, 91 S. E. 541.

Original contract, testimony of its contents admissible, after proof of execution. **Fay**, 147/648, 95 S. E. 224. Sufficiency of preliminary examination for. **Turner**, 127/338, 56 S. E. 434. Showing insufficient. **Smith**, 110/650, 36 S. E. 105.

Original plat and grant, evidence as to loss, sufficient to admit certified copy. **Shingler**, 135/666, 70 S. E. 563.

Bill of sale, secondary evidence of

contents of, admissible. **Fambrough**, 141/794, 82 S. E. 249.

Magistrate parol proof as to judicial acts of. **Watts**, 12 A. 350, 77 S. E. 206

Maker, parol that one signing apparently as, signed only as witness, admissible. **Thompson**, 9 A. 367, 71 S. E. 678.

Map of school districts, parol evidence of contents, and of posting by authority, received after proof of its loss. **Hughes**, 147/232, 93 S. E. 204. Burden of proving failure of compliance with law. **Beckham**, 147/325, 93 S. E. 884.

Marriage, parol to prove. **Southern Ry. Co.**, 126/1, 54 S. E. 911. "I think he is a married man. He has a wife and children," held sufficient, on trial for adultery, to show marriage. **Walters**, 23 A. 666, 99 S. E. 138.

Material, testimony admissible to show that contractor furnished, and what owner paid; contract in writing. **Burton**, 136/420, 71 S. E. 870.

Minutes of court, parol to correct. **Chelsey**, 121/344, 49 S. E. 258.

Entry of chambers proceeding on, with matters determined in open court, raised no ambiguity for admission of parol evidence. **Morehead**, 131/808, 63 S. E. 507.

Of municipal corporation, parol to show facts which law required to be shown by, not admissible. **City of Rome**, 19 A. 559, 91 S. E. 880.

Parol to prove fact that should appear by, not admissible, without showing that no record was kept. **Town of Jackson** 116/719, 43 S. E. 53.

Witness allowed to testify that he was president of corporation, over objection that minutes were better evidence; tenure of office being only collaterally involved. **Knight**, 11 A. 536, 75 S. E. 834.

Misrepresentation in procuring signature to writing, parol to show, when admissible. **Hayes**, 143/183, 84 S. E. 442. Parol as to misrepresentations of contents of paper, when admissible. **Hester**, 8 A. 380, 69 S. E. 31. Parol that landowner was told road would be run

on route different from that taken, excluded. **Murray County**, 140/689, 79 S. E. 783.

Mistake in deed or mortgage, admissibility of parol proof as to, in proceeding for reformation. **Nelson**, 129/36, 58 S. E. 697.

In written contract, when shown by parol. **Kitchens**, 121/294, 48 S. E. 945. Not necessary, where manifestly a clerical error. **Gaulding**, 9 A. 580, 71 S. E. 1018.

In will, as to the number of a lot devised, parol to show, when not admissible. **Oliver**, 121/836, 49 S. E. 743, 104 Am. St. R. 185.

In description of land, conveying more than intended, when not shown by parol. **Thompson**, 137/308, 73 S. E. 640.

In deed, parol to show, not admitted, grantor not being a party. **Roberts**, 136/790, 72 S. E. 239.

Money orders, secondary evidence of. **Gary**, 7 A. 501, 67 S. E. 207.

Mortgage; parol evidence not admitted to extend mortgage to debt not specified in it. **Right**, 10 A. 548, 73 S. E. 863.

Parol as affecting. **Hester**, 128/535, 58 S. E. 165. To identify mortgaged crops. **Hillis**, 14 A. 30, 33, 79 S. E. 930; **First National Bank**, 14 A. 99, 80 S. E. 310. Parol to show that mortgage was for purchase-money, admissible, when. **Luke**, 7 A. 784, 66 S. E. 493.

Motive for executing contracts, parol evidence. **148/651**, 98 S. E. 79.

Mutilation of letters explainable by parol. **Greer**, 138/664, 75 S. E. 1050.

Name of obligee in contract to settle litigation, parol to supply. **McLeod**, 102/533, 27 S. E. 680. Parol to show that name of party in bond was clerical error, not admitted. **McConnell**, 17 A. 387, 87 S. E. 156.

Negotiations and promises inducing execution of note were not such fraud as to authorize parol proof of them, to prevent recovery on the note. **Thomson**, 13 A. 334, 79 S. E. 182.

Leading to written contract, parol as to, and showing it was made in settle-

ment of disputed claim, admitted. **City R. Co.**, 115/658, 42 S. E. 45.

Resulting in unambiguous written contract, not admissible to vary or contradict it. **Capps**, 130/146, 60 S. E. 455. See **Littleton**, 130/692, 61 S. E. 593; **Coal Co.**, 130/812, 61 S. E. 987, 21 L. R. A. (N. S.) 1051; **Wallis**, 16 A. 807, 86 S. E. 301. Parol to show antecedent negotiations in conflict with lost written contract as established by parol proof, not admissible. **New Ware Furniture Co.**, 16 A. 19, 84 S. E. 491.

Inadmissible to vary or contradict written contract of sale. **Arnold**, 120/586, 48 S. E. 132; **Swift**, 15 A. 255, 82 S. E. 914.

Non est factum, parol evidence to show. **Chicago Co.**, 139/816, 78 S. E. 244; **American Jewelry Co.**, 127/543, 56 S. E. 642. What received. **Pullin**, 143/184, 84 S. E. 443.

Note, execution of, denied by plea of non est factum, extrinsic evidence necessary. Slight evidence sufficient, and court decides thereon. **Patton**, 124/965, 53 S. E. 664, 5 L. R. A. (N. S.) 502, 4 Ann. Cas. 639.

Parol, as to representations or warranty made on executing, when not admissible. **Fleming**, 4 A. 351, 61 S. E. 518. See **Stimpson Scale Co.**, 4 A. 567, 61 S. E. 1131.

Parol, as to authority to indorse, admissible. **Connor**, 7 A. 153, 66 S. E. 546. That note payable to one individually is held in representative capacity, admitted. **Kennedy**, 7 A. 241, 66 S. E. 620.

Not purporting to express contract, parol agreement provable. **Anthony Shoals Co.**, 138/460, 75 S. E. 606.

Parol agreement at or before execution of, affecting its terms, not admissible. **Jones**, 5 A. 161, 62 S. E. 992. Not admissible though based on consideration. **Reams**, 5 A. 226, 62 S. E. 1014. Notes not contradicted or varied by parol evidence explaining their consideration and circumstances. **Camp**, 143/393, 85 S. E. 196.

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Parol as to contents of, not admitted. *Lummas*, 17 A. 414, 87 S. E. 147.

Harmless error in allowing proof inconsistent with terms of. *Fisher*, 14 A. 220, 80 S. E. 536.

Parol, incompetent to change character of, as a promise to pay. *Brewer*, 116/60, 42 S. E. 525.

Parol, in conflict with terms of, not admitted. *Branch*, 4 A. 90, 60 S. E. 1027; *Lowe Co.*, 4 A. 158, 60 S. E. 1077; *McNeel*, 106/216, 32 S. E. 119.

Parol, in defense to action on, that vendee would make good money, incompetent. *Elban*, 145/383, 89 S. E. 327.

Given for patent right, or where it is but part of contract, the other part being in parol, parol in defense to suit on, admissible. *Crooker*, 3 A. 190, 59 S. E. 722.

Parol not admitted to graft condition on. *Union Cen. Ins. Co.*, 123/470, 51 S. E. 389; *Stapleton*, 111/848, 36 S. E. 428; *Planters Bank*, 22 A. 496, 96 S. E. 328.

Parol, that maker was to pay note when he got certain money, and was to get the money by a stated time, not subject to objection that it sought to vary terms of note. *Matthews*, 19 A. 489, 91 S. E. 914.

That payee agreed, at the time of its execution, that he would never enforce it, not admissible. *Sasser*, 11 A. 88, 74 S. E. 797; *Turner*, 20 A. 735, 93 S. E. 234.

Proof of parol contract, where note sued on grew out of it, made subsequently to written contract. *Dooley*, 104/771, 31 S. E. 203.

Parol that note was given, admissible. *Sasser*, 9 A. 178, 70 S. E. 980; *Avery*, 17 A. 458, 87 S. E. 692.

That note was payable in something else than money, not admissible. *Kerr*, 13 A. 9, 78 S. E. 682.

Parol, to show that a certain note was given in renewal of another, inadmissible, without laying foundation. *Matthews*, 13 A. 412, 79 S. E. 227; *Garmany*, 124/876, 53 S. E. 669, 110 Am. St. R. 207.

Parol to show understanding on which notes were given, when not admissible. *Byrd*, 127/30, 56 S. E. 86.

Parol to show untruth of representation or warranty, where face of note shows its consideration. *Pryor*, 134/288, 67 S. E. 654, 28 L. R. A. (N. S.) 267.

Secondary evidence of amount and signature of note, when not admissible. *Dale*, 140/790, 79 S. E. 1127.

Parol to vary terms of payment or date of maturity or amount of note, or to engraft extension of time, not admissible. *Crooker*, 3 A. 190, 59 S. E. 722; *Branan*, 3 A. 586, 60 S. E. 325.

Notice, secondary evidence of, when not admissible. *Bush*, 127/309, 56 S. E. 430, 9 Ann. Cas. 240.

Novation or abrogation of written contract, parol to show, admissible. *Morgan*, 7 A. 263, 66 S. E. 965. Novation or change of contract which is required to be in writing can not be shown by parol. *Ver Nooy*, 17 A. 229, 233, 86 S. E. 456.

Objection, parol admitted without, contract construed in light of. *Walters*, 114/564, 40 S. E. 803.

Secondary evidence received without, for want of preliminary proof as foundation, becomes competent and relevant. *Patton*, 124/974, 53 S. E. 664, 5 L. R. A. (N. S.) 592, 4 Ann. Cas. 639.

To secondary evidence not prevented by producing in response to notice. *Fraternel Relief Asso.*, 9 A. 45, 70 S. E. 265. Testimony not open to objection that it was derived from books or from hearsay. *Alexander*, 140/267, 78 S. E. 1071.

Officer, parol to prove election of, not admitted. *Fletcher*, 111/253, 36 S. E. 646.

Omitted stipulations not inconsistent with ambiguous written contract, parol received to prove. *McCommons*, 131/313, 62 S. E. 230.

Order for shipment of goods, ambiguous in agreement to pay for them "delivered in Macon;" parol to explain, admis-

sible. *McCook*, 14 A. 381, 80 S. E. 863.

Ordinary's disqualification, proof of, where this was not entered of record, when admissible. *McAfee*, 138/403, 75 S. E. 319.

Original record is secondary evidence, and copy primary, when. *Belt*, 103/18, 29 S. E. 451.

Ownership of personal property shown by written contract of sale, oral testimony as to ownership not admissible, when. *Peacock*, 18 A. 127, 88 S. E. 906.

Of land, parol as to, not sufficient. *Dumas*, 130/737, 61 S. E. 710.

Parol to prove recognition of other's ownership of land, when admissible. *Glover*, 132/797, 798, 65 S. E. 64.

Paper in possession of accused; production not compellable, and parol proof of contents admissible. *Kinsey*, 12 A. 422, 77 S. E. 369; *Sellers*, 12 A. 687, 78 S. E. 196.

Party, parol that one named as, in contract was not really a party, and that his name was used instead of that of a real party, admissible. *Hyer*, 12 A. 841, 79 S. E. 58. **Parol to show that a written contract related to an agreement with a person not named therein, not admitted.** *Anderson*, 16 A. 446, 85 S. E. 606.

Payment of note shown by parol. *Borders*, 18 A. 333, 89 S. E. 451.

Receipt for, subject to explanation or contradiction. *Charleston R. Co.*, 122/580, 50 S. E. 374.

Of but one of two demands shown, though receipt given "in full payment of all claims to date, of whatsoever nature." *Armour*, 110/403, 35 S. E. 787.

Parol as to time of, in contract of sale of land. *Hawkins*, 132/266, 63 S. E. 852, 131 Am. St. R. 190.

Parol to show time of, conditions, etc., admissible where written contract provided for payment of a stated sum as thereafter agreed. *Morrison*, 119/698, 46 S. E. 863.

May be shown by parol evidence, though made by check not produced. *Armour*, 9 A. 707, 72 S. E. 168.

Parol-evidence rule not violated by admitting testimony that a certain payment was made on a different purchase than that mentioned in a bond for title. *Wilcox*, 4 A. 35, 60 S. E. 810.

Of note sued on, parol to show, and that other notes were deposited to secure it, and that certain sums were received thereon by payee. *Ober*, 106/406, 32 S. E. 371.

Of internal-revenue tax, secondary evidence as to. *Hdar*, 14 A. 549, 550, 81 S. E. 811.

Petition filed in court of record of another county, parol not admissible to prove contents of. *Parker*, 123/441, 51 S. E. 465.

Plea requiring support by parol proof which would not be admissible, stricken. *Sloan*, 20 A. 126, 92 S. E. 893.

As to parol representations in procurement of note, insufficient to authorize proof of such representations. *Dixon*, 18 A. 45, 49, 88 S. E. 825.

Parol proof of contents of, not admissible, when. *Duke*, 13 A. 708, 79 S. E. 861.

Power of sale in mortgage, parol agreement as to exercise of. *Moseley*, 106/602, 32 S. E. 638.

Price to be paid, testimony not admissible to show stipulations as to; contract being in writing. *Burton*, 136/421, 71 S. E. 870.

Primary and secondary, as to city ordinance. *W. & A. R. Co.*, 104/12, 30 S. E. 424.

Of action of grand juries on indictments; entry of return on minutes, and testimony of individual jurors. *Elliott*, 1 A. 114, 57 S. E. 972.

Of contents of lost paper. *Stricklin*, 1 A. 141, 58 S. E. 215.

Of papers in possession of accused. *Kinard*, 1 A. 146, 58 S. E. 263.

Prisoner's statement, at coroner's inquest may be proved by oral testimony. *Green*, 124/343, 52 S. E. 431.

Proceedings in court, parol testimony as to, not admissible. Phillips, 18 A. 109, 88 S. E. 905; Kennedy, 18 A. 150, 88 S. E. 1000.

Profits, testimony as to absence of, received over objection that books of the business are better evidence. Morrison, 122/421, 50 S. E. 178, 69 L. R. A. 87.

Promise, at time of signing note, that any error discovered in its amount would be corrected, parol to show, not admissible. Wilson, 22 A. 83, 85, 95 S. E. 317; Stacer, 22 A. 285, 95 S. E. 1016.

Purchase-price, parol admissible to contradict recital of payment of. Hines, 9 A. 778, 72 S. E. 191.

Parol as to amount of, when not rejected because contract of sale was not written. Hutcherson, 142/262, 82 S. E. 643.

Purpose for which note was to be used, parol as to. Lovett, 23 A. 627, 99 S. E. 156. Parol that purpose of written contract was different from that recited therein, when not admissible. Heitmann, 7 A. 740, 68 S. E. 51. Parol to show why paper was executed, and rebut inference from execution; when admissible. Rucker, 6 A. 361, 65 S. E. 55.

Question as to admissibility of parol, to vary writing, not considered, when not raised on trial. Supreme Lodge, 19 A. 58, 90 S. E. 986.

Railroad operations, parol to explain meaning of terms used in, admissible. Dixon, 110/174, 35 S. E. 369.

Real contract beyond written terms, parol to show, when not received. Coleman, 137/22, 72 S. E. 399.

Parol to show that a written contract does not set forth, not admissible in absence of pleadings asking for reformation. Wellmaker, 123/201, 51 S. E. 436.

Parol to prove contract sued on did not contain, and was signed under false representations. McBride, 102/422, 30 S. E. 999.

Receipt as highest evidence of payment, when not a sufficient objection to parol evidence. Grantham, 136/17, 70 S. E. 790.

Parol explanation of, rule as to, not applied to paper in form of receipt with grant of right of way, and release of damages. Southern Bell Tel. Co., 129/558, 59 S. E. 215.

Explainable by parol proof. Bray, 14 A. 221, 80 S. E. 669. Parol, to deny or explain, admissible. A. C. L. R. Co., 8 A. 45, 68 S. E. 743; Gibson, 13 A. 459, 79 S. E. 354.

For payment of first insurance premium, whether subject to parol explanation. Williams, 8 A. 306, 68 S. E. 1082.

For purchase-money, with agreement to convey land, when not contradicted by parol. Graham, 131/785, 63 S. E. 348.

Parol proof as to incorrectness of, admitted. Atlantic R. Co., 6 A. 572, 65 S. E. 355.

Rule as to parol explanation of; when not applied. Southern Bell Tel. Co., 129/558, 59 S. E. 215.

Recitals in written conveyances, etc., admissibility of parol to explain. Coldwell, Co., 138/233, 236, 75 S. E. 425. To contradict recital of "value received," in assignment of bond for title. Talley, 23 A. 749, 99 S. E. 315.

When parol not excluded by contract reciting that it contains all the agreements of the parties. Hartwell Grocery Co., 8 A. 727, 70 S. E. 48.

Contract reciting that "neither party is bound by any agreement or understanding not appearing on the face of this agreement;" admissibility of parol to affect. Greenwood Theatrical Agency, 19 A. 725, 92 S. E. 301.

Record, parol based on, not admissible. Central of Ga. Ry. Co., 23 A. 396, 98 S. E. 357. Parol that record does not contain particular entry, what necessary to admit. Wilson, 127/316, 56 S. E. 457.

Renewal of note, admissibility of parol proof as to. Matthews, 13 A. 412, 79 S. E. 227.

Rent so-called is really part of purchase-price, parol admitted to show. Lytle, 122/459, 50 S. E. 402.

Parol to show that a note purporting

to be for, was for a different consideration; when admissible, and when not. **Wallis**, 16 A. 805, 806, 86 S. E. 391; **Leverette**, 8 A. 798, 801, 70 S. E. 177.

Parol to show that consideration of rent note failed because of shortage in land rented and breach of agreement to make certain improvements, admissible. **Watson**, 12 A. 660, 78 S. E. 50.

Parol to vary written rent contract, not admitted. **Little**, 12 A. 754, 78 S. E. 470.

Parol to show rent contract for not more than one year, admissible. **Cleveland-Manning Co.**, 15 A. 657, 84 S. E. 174; **Ridgway**, 8 A. 564, 70 S. E. 28.

Parol as to rent contract evidenced by note, not admissible, when. **Whitlock**, 15 A. 38, 82 S. E. 664.

Parol that property was rented, not inadmissible on the ground that the written contract would be the best evidence. **Borders**, 18 A. 333, 89 S. E. 451.

Report in writing sent; no error to allow plaintiff to testify that he sent report to defendant, when the judge restricted the evidence to the fact that the report was made. **Southern States Syndicate**, 113/982, 39 S. E. 480.

Representations in conflict with written contract of sale, purchaser not allowed to show. **Kendrick**, 21 A. 174, 94 S. E. 267.

In sale of land for which note sued on was given, parol to show, not admissible, when. **Sloan**, 20 A. 126, 92 S. E. 893.

In sale of horse, parol as to, not admissible, in view of terms of purchase-money note sued on. **Outlaw**, 20 A. 776, 93 S. E. 310; **Love**, 19 A. 86, 90 S. E. 978. See **McDew**, 19 A. 166, 91 S. E. 246.

Of salesman procuring written contract, parol as to, not admissible, when. **Outcault Advertising Co.**, 7 A. 150, 66 S. E. 480.

Representative capacity, parol that maker signed deed in, as executor, did not vary its terms or effect. **Hart**, 130/

505, 61 S. E. 26. See **Coaling Co.**, 130/811, 812, 61 S. E. 987, 21 L. R. A. (N. S.) 1051.

Rescission, in parol, of contract for sale of land. **Jay**, 8 A. 481, 70 S. E. 16.

Right-of-way, parol to vary effect of deed to, by showing agreement under which it was made, not admitted. **Poole**, 19 A. 631, 91 S. E. 1052.

Parol to show understanding, when written contract was made, that telephone line was to go through specified part of land, not admissible. **Southern Bell Tel. Co.**, 117/1001, 44 S. E. 885. Parol to show where strip of land, described in deed to right of way was to begin and end, and where bed of railroad track was to lie, admissible. **Ginn**, 119/475, 46 S. E. 631.

Parol evidence of owner of, that he has conveyed it to defendant, to show defendant not a trespasser. **Gaston**, 120/516, 48 S. E. 188.

Rule as to parol evidence stated. **Dixon**, 18 A. 50, 51, 88 S. E. 825. Contract in writing, admissibility of parol evidence in suit on. Rules distinguished. **Pryor**, 134/289, 67 S. E. 654, 28 L. R. A. (N. S.) 267.

Of railroad, admissibility of parol evidence touching application of. **Charleston & Ry. Co.**, 140/155, 78 S. E. 763.

Sale, or authority to sell, parol to show, when admitted. **Hirsh**, 125/657, 54 S. E. 678.

Parol to vary written contract of, on which was based the account in suit. **Wheelis**, 23 A. 563, 99 S. E. 11.

Parol evidence of contract of, when not allowed. **Brooks**, 118/677, 45 S. E. 485.

When parol not admissible to vary terms of complete written contract of. **Bond**, 145/200, 88 S. E. 954.

Parol as to terms of, where a note or other writing contains terms of the contract; rule as to when admissible, and when not. **Watson**, 15 A. 63, 82 S. E. 638; **Brooks**, 15 A. 64, 82 S. E. 634.

Sale—(Continued).

Proof of oral statements, in conflict with written stipulation that "this sale is made under the inducements and representations herein expressed and no others," properly disregarded by court in directing verdict. *Cook*, 17 A. 543, 87 S. E. 832.

Stipulation: "No verbal agreement between salesman and purchaser binding on the company," did not prevent parol explanation. *Hartwell Grocery Co.*, 8 A. 728, 70 S. E. 48.

Parol as to agreement of salesman procuring written contract, not admissible, when. *Georgia Agricultural Works*, 11 A. 80, 74 S. E. 718.

Admissibility of parol proof to affect terms of salesman's memorandum of order. *Goldsmith*, 7 A. 849, 68 S. E. 462.

Seal and recital of "value received," not prevent maker of note from showing want of consideration. *Krueger*, 22 A. 210, 95 S. E. 718.

Secret order, parol to prove substance of charges preferred by, against a member, not admissible without proof that the charges were not in writing. *Adams*, 16 A. 50, 85 S. E. 936.

Security referred to in promissory note, competency of aliunde evidence to identify. *Bank of Chatsworth*, 148/367, 96 S. E. 996.

Parol as affecting character of deed as. *Pierce*, 111/725, 37 S. E. 79; *F. C. & P. R. Co.*, 111/697, 36 S. E. 928.

Parol to show that provisions in unambiguous contract for sale of land were intended only as security, not admitted. *Burton*, 126/805, 55 S. E. 933.

Parol to show extension of security for debt to additional indebtedness. *Troup Co.*, 23 A. 751, 99 S. E. 541.

Parol agreement, to cancel evidence of debt secured by deed, pay grantor a sum of money, and take absolute title, admissible in defense to suit of grantor's heirs to recover the land. *Carter*, 114/321, 40 S. E. 290.

Service of process, admissibility of parol testimony to show. *Bell*, 109/209, 34 S. E. 339; *Battle*, 107/129, 32 S. E. 838.

Parol to rebut presumption of, record of judgment being silent. *Weaver*, 3 A. 726, 60 S. E. 367.

Services, parol as to compensation to be paid for, in a contingency as to which no compensation was provided in written contract fixing compensation for other service, admissible here. *Underdonk*, 17 A. 419, 87 S. E. 680. Parol to show what services a written agreement to pay a stated sum as "commission on said purchase" applied to, admissible. *Denton*, 7 A. 267, 66 S. E. 810.

Settlement of liability; words "in full payment" erased from check; parol evidence admissible. *Gay*, 138/399, 75 S. E. 323.

Sheriff, parol not admissible to attack return of, on final process, except on traverse upon legal ground by party to the cause. *Hawkins*, 131/347, 62 S. E. 285. Parol to correct error in recital in record of sheriff's deed, as to date of levy, admitted. *Hopson*, 22 A. 392, 95 S. E. 1015.

Shipped, parol that goods were, and express receipt taken, when not objectionable. *Eldorado Jewelry Co.*, 130/778, 61 S. E. 855. Parol to show to whom shipment was made, not admissible; bill of lading was best evidence. *Harris*, 18 A. 320, 89 S. E. 351.

Statement of accused at commitment trial, parol to show, not admitted; presumed that the statement was reduced to writing, as the law required it to be. *McDuffie*, 17 A. 343, 86 S. E. 821.

Statute of frauds, parol in aid of instruments, to meet requirements of, excluded. *Timmons*, 141/714, 82 S. E. 29.

Parol evidence of material term of contract of sale, obnoxious to. *Stewart*, 118/541, 45 S. E. 398.

Parol to modify prior written contract within, not admissible. *Willis*,

132/242, 63 S. E. 828; **Hawkins**, 132/266, 63 S. E. 852, 131 Am. St. R. 190.

Parol agreement for substitution of new purchaser, for one executing purchase-money notes for land, within statute. **Reams**, 5 A. 226, 62 S. E. 1014.

Statute of limitations, parol to aid in taking debt out of, unavailing. **Hughes**, 116/670, 42 S. E. 1035.

Stock subscriptions, oral promises and understanding not received in defense to suit on. **Chicago Btg. Co.**, 101/823, 29 S. E. 291; **Bunn**, 18 A. 567, 568, 90 S. E. 78. Parol as to representations in sale of stock shares, not admitted in suit on note. **Bald Mountain Portland Cement Co.**, 23 A. 629, 99 S. E. 134.

Street, parol evidence competent that place was used as, by public, on issue as to location. **Johnston**, 138/556, 77 S. E. 807.

Stubs of money orders admitted, when. **Gary**, 7 A. 501, 67 S. E. 207.

Subscribing witness, secondary evidence as to signature of, when admissible. **Terry**, 127/212, 56 S. E. 282.

Subsequent modification of written contract, or waiver of stipulation, parol to show, admissible. **Elyea-Austell Co.**, 13 A. 182, 79 S. E. 38. Parol, not admissible to vary written contract. Rule not violated by testimony of later oral agreement. **Loveless**, 136/338, 71 S. E. 166.

Substitution of one debtor for another, parol to show, admitted. **Mize**, 8 A. 408, 69 S. E. 316.

Suit, nature and result of, not provable by parol testimony. **Kennedy**, 18 A. 150, 88 S. E. 1000.

Meaning of contract sufficiently alleged to allow proof thereof by aliunde evidence. **Happ**, 136/671, 71 S. E. 1099.

Parol to show that suit was brought for a certain purpose, and its result; not admissible; certified copy of proceedings is proper mode of proof. **Kennedy**, 18 A. 150, 88 S. E. 1000.

Parol that orders had been taken dismissing a suit, rejected because of better. **Keen**, 136/194, 71 S. E. 141.

Suretyship shown by parol proof. **McWhorter**, 22 A. 210, 95 S. E. 720; **Dale**, 140/790, 79 S. E. 1127; **Hill**, 15 A. 458, 83 S. E. 859; **Trammell**, 121/778, 49 S. E. 739; **Williams**, 9 A. 716, 72 S. E. 177; **Shank**, 124/509, 52 S. E. 621; **Buck**, 104/660, 30 S. E. 872; **Bishop**, 13 A. 38, 78 S. E. 947. Circumstances showing suretyship. 1b.

Of one signing as indorser, shown by parol. **Daniel**, 11 A. 789, 76 S. E. 166.

Of one signing note under seal as maker, parol to show, admitted. **Hardy**, 7 A. 472, 67 S. E. 205.

Of one apparently principal, parol to show, admissible when. **Bishop**, 13 A. 38, 78 S. E. 947; **Duckett**, 23 A. 630, 99 S. E. 151.

On note, what pleading necessary to render parol admissible to show. **Morrison**, 19 A. 434, 91 S. E. 509.

Parol that apparent contract of guaranty was really one of suretyship, when admissible. **Paris**, 143/324, 85 S. E. 126.

Parol evidence that one of defendants in execution was surety, when excluded. **Warthen**, 132/113, 63 S. E. 832, 131 Am. St. R. 184.

Parol to show promise of obligee to surety on signing bond, when admissible. **Scarrett**, 117/186, 43 S. E. 413.

Surrender in parol by grantee of estate in timber, not revest title; no estoppel when not acted on. **Warren**, 129/329, 58 S. E. 858.

Survey, limits of, not shown by oral declaration of surveyor. **Martin**, 126/577, 55 S. E. 499.

Tax books, oral testimony that no return of a certain person appeared on, admitted. **Vizard**, 117/67, 43 S. E. 426. Tax receipt, contradicted by parol. **Gibson**, 13 A. 459, 79 S. E. 354.

Technical terms in building contract, parol to explain. **Cannon**, 116/452, 42 S. E. 734. When parol admissible to explain meaning of technical trade

- term used in written contract. **Brackett**, 127/672, 56 S. E. 762.
- Tender in time**, parol of waiver, and estoppel by conduct. **Studdard**, 139/748, 78 S. E. 116.
- Time**; when parol received to prove that time was of essence of contract to deliver goods. **Alabama Construction Co.**, 131/365, 62 S. E. 160. Parol to show meaning of "during the turpentine season," in contract for service. **Peacock**, 10 A. 408, 73 S. E. 404. Parol to explain meaning of term, "as early as possible," in stipulation as to time of delivery, admitted. **Steinhauer & Wight Inc.**, 16 A. 470, 85 S. E. 677.
- Title perfect**, when required exhibited, defects not aided by parol. **Dixon**, 112/158, 37 S. E. 180; **Jenkins**, 112/476, 37 S. E. 719.
- To land, not proved by parol. **Wilson**, 141/790, 791, 82 S. E. 241; **Holder**, 127/51, 52, 56 S. E. 71; **L. & N. R. Co.**, 134/108, 67 S. E. 652; **McClurg**, 2 A. 624, 58 S. E. 1064. Recognition of another's ownership may be shown. **Glover**, 132/797, 798, 65 S. E. 64.
- To property attached to realty, not proved by oral statement, unless possession shown. **Holder**, 127/51, 52, 56 S. E. 71.
- To personalty, parol to show, in one who had bill of sale to it, not admissible, the writing being best evidence. **Jones**, 16 A. 424, 85 S. E. 617.
- Parol evidence of muniment of, shown to be lost. **Houston**, 124/417, 52 S. E. 757.
- Transfer of execution**, not shown by parol proof. **Walton**, 11 A. 160, 74 S. E. 1006.
- Trusteeship** not provable by parol, when. **Traylor**, 11 A. 497, 75 S. E. 828.
- Trust express**, not established in parol. **Bentley**, 147/373, 94 S. E. 221; **Wilder**, 138/573, 75 S. E. 654; **Jones**, 138/730, 75 S. E. 1129; **Wheeler**, 139/604, 77 S. E. 875; **DeLoach**, 142/436, 83 S. E. 122.
- Implied or resulting, parol evidence to show. **Swift**, 138/229, 232, 75 S. E. 8; **Wilder**, 138/573, 576, 75 S. E. 654.
- Parol to imply or rebut. **Simpson Grocery Co.**, 148/411, 96 S. E. 872.
- Implied, and notice thereof; purchase of land by husband with wife's money; parol evidence. **Endsley**, 143/607, 85 S. E. 852.
- Parol to attach trust to deed absolute on its face, not admissible. **L. & N. R. Co.**, 134/108, 67 S. E. 652. Compare **Pavlovski**, 134/704, 68 S. E. 511; **Jones**, 134/857, 68 S. E. 729, 137 Am. St. R. 276.
- Understanding** not heard in defense to suit on written contract. **Andrews**, 1 A. 560, 58 S. E. 130. Compare **Underwood**, 1 A. 625, 57 S. E. 953. Parol not admissible to show party's understanding (known to other party) of unambiguous contract. **Town of Decatur**, 136/854, 72 S. E. 351.
- Unnecessary allegation, secondary evidence of, when harmless. **Ager**, 2 A. 158, 58 S. E. 374.
- Unsigned writing**, purporting to embody agreement, admissibility of parol to affect. **Goldsmith**, 7 A. 849, 68 S. E. 462.
- Usury**, plea of, provable by parol. **Whilden**, 3 A. 69, 59 S. E. 336; **Dwelle**, 106/486, 32 S. E. 593. See **Furr**, 3 A. 188, 59 S. E. 596.
- Verdict or judgment**, parol to vary, when admitted. **Bass**, 5 A. 749, 62 S. E. 1004.
- On inquisition of lunacy, shown by parol testimony, where papers lost and no record. **Adams**, 148/339, 96 S. E. 858.
- Waiver of objection** to secondary, by agreement to use it instead of primary evidence. **Hinkle**, 133/255, 65 S. E. 427.
- Warehouse receipt**, issue of, when explained by parol. **Maynard**, 116/200, 42 S. E. 376. Parol to explain, and show custom affecting stipulation therein, admitted. **Rochelle Gin Co.**, 13 A. 621, 79 S. E. 584.
- Warranty** made when purchase-money note was given, parol as to, not ad-

mitted. *Borders*, 22 A. 712, 97 S. E. 96.

Not excluded by terms of contract in note, parol as to. *Whigham*, 8 A. 509, 70 S. E. 23.

In sale, admissibility of parol as to. *International Harvester Co.*, 19 A. 716, 92 S. E. 35. Parol to show, where contract of sale was in writing, not admitted. *Fay & Eagan*, 129/317, 58 S. E. 826. Where the purchaser's note excluded warranty, not admissible. *Daniel*, 16 A. 39, 41, 84 S. E. 490; *Cochran*, 11 A. 303, 75 S. E. 143; *Mock*, 17 A. 448, 87 S. E. 608. But such testimony was harmless, in view of rescission of contract. *Stewart*, 20 A. 488, 93 S. E. 116. Parol not received to enlarge or modify complete written contract of sale with express warranty. *Case & Co.*, 137/602, 73 S. E. 1063.

Of articles sold, excluded by terms in mortgage taken by vendor, parol as to. *Holt & Duggan Co.*, 146/46, 90 S. E. 331.

Parol to show intention to except part of lot from, not received. *Godwin*, 106/196, 32 S. E. 114.

Express, as to quality of property, parol to show, as defense to suit on purchase-money note retaining title in vendor until payment and silent as to any warranty, not admissible. *Bond*, 13 A. 179, 89 S. E. 79. See *Gary*, 18 A. 506, 89 S. E. 599.

Parol as to, when not excluded by terms of note. *Toller*, 12 A. 496, 77 S. E. 650.

Parol as to limitation of, not admissible, when. *Turner*, 14 A. 215, 80 S. E. 680.

As to soundness of mule, parol to vary terms of note which excluded. *Jones*, 14 A. 84, 80 S. E. 341. Parol admitted to support defense to note, by showing unsoundness of mule, as to which the note contained a stipulation limiting the seller's warranty. *Edenfield*, 10 A. 355, 73 S. E. 416.

Parol to show promise, representation, or warranty in addition to writ-

ten warranty, not admissible, when. *Schofield-Burkett Co.*, 16 A. 321, 85 S. E. 285.

Parol that an express warranty was intended to cover patent defects, admitted. *Turner*, 14 A. 215, 80 S. E. 680.

Weather-bureau report, admissibility of parol testimony as to. *Albany Phosphate Co.*, 4 A. 781, 62 S. E. 533.

Wife, testimony of, on cross-examination, that she gave mortgage, not admissible; mortgage being better evidence. *Bowling*, 142/397, 83 S. E. 112.

Parol gift of land to, as showing waiver of marital rights and bona fides of subsequent deed attacked by creditors. *Lamkin*, 103/631, 30 S. E. 596.

Parol to show that the real consideration of wife's note was debt of husband. *Simmons*, 22 A. 359, 96 S. E. 9; *Hill*, 17 A. 107, 86 S. E. 397.

Will, admissibility of parol to explain. *Oliver*, 121/838, 49 S. E. 743, 104 Am. St. R. 185.

Writing, parol to affect, when not admissible. *Harrison*, 119/9, 45 S. E. 730; *Bass Co.*, 119/124, 45 S. E. 980; *American Harrow Co.*, 119/186, 45 S. E. 983; *Sivell*, 119/171, 46 S. E. 67. See *Holcomb*, 119/466, 46 S. E. 671; *Johnson*, 119/196, 45 S. E. 992, 100 Am. St. R. 166; *Ginn*, 119/475, 46 S. E. 637; *Morrison*, 119/698, 46 S. E. 863; *Foote & Davies*, 115/985, 42 S. E. 413; *Wilson*, 117/46, 43 S. E. 408; *Scarrett*, 117/186, 43 S. E. 413; *Mays*, 117/814, 45 S. E. 252; *Ga. Medicine Co.*, 117/851, 45 S. E. 238; *Southern Bell Tel. Co.*, 117/1001, 44 S. E. 885. See *Parker*, 117/1015, 1017, 44 S. E. 807; *Bass Co.*, 113/1142, 39 S. E. 471. Rule as to when admissible, and when not; cases collected. *Heitmann*, 6 A. 584, 65 S. E. 590; *Robson*, 142/431, 83 S. E. 207.

Parol to explain, admissibility of. *Sterling Cycle Wks.*, 109/559, 35 S. E. 55; *Ainslie*, 107/747, 748, 33 S. E. 711. Parol not admissible to explain a plain and unambiguous writing. *Townsend*,

Writing—(Continued).

127/342, 56 S. E. 436, 119 Am. St. R. 340. Parol inadmissible to vary terms of written contract. *Council*, 122/63, 49 S. E. 806; *Butler*, 122/371, 50 S. E. 132; *Edwards*, 122/827, 50 S. E. 943; *Cobb*, 126/619, 55 S. E. 935; *Bush*, 4 A. 532, 62 S. E. 92; *Ætna Insurance Co.*, 130/175, 60 S. E. 531, 14 Ann. Cas. 1070; *Pennsylvania Casualty Co.*, 130/766, 770, 61 S. E. 829; *Dozier*, 138/190, 74 S. E. 1086; *Gates*, 11 A. 345, 75 S. E. 265; *Spence Drug Co.*, 11 A. 476, 477, 75 S. E. 817; *Case Threshing Machine Co.*, 16 A. 327, 85 S. E. 205; *Fortson*, 23 A. 607, 99 S. E. 147; *Smith*, 23 A. 795, 99 S. E. 536; *Camp*, 18 A. 416, 89 S. E. 491. To contradict. *Graham*, 131/785, 63 S. E. 348. To contradict or vary. *Byrd*, 127/30, 56 S. E. 86. To engraft stipulations not expressed in written contract. *Brown*, 101/131, 28 S. E. 606; *Hawkins*, 101/145, 28 S. E. 632; *Maxwell*, 101/55, 28 S. E. 672. To add terms. *Smith*, 137/292, 72 S. E. 1093; *Champion Mfg. Co.*, 16 A. 536, 85 S. E. 673; *Bank of Lavonia*, 140/594, 79 S. E. 459.

To add to or vary. *National Scales Co.*, 116/513, 42 S. E. 783; *Heard*, 116/930, 43 S. E. 375; *O'Neal*, 148/62, 95 S. E. 709; *Flint*, 148/344, 96 S. E. 858; *Brosseau*, 148/651, 98 S. E. 79; *Bibb Sewer Pipe Co.*, 142/263, 82 S. E. 642; *Campbell*, 10 A. 839, 74 S. E. 443. To add to, take from, or vary. *Bowen*, 2 A. 521, 58 S. E. 784; *Lunsford*, 101/39, 28 S. E. 496. To contradict or vary. *L. & N. R. Co.*, 132/174, 63 S. E. 898. Rule and exception. *Thrower*, 144/372, 87 S. E. 301; *McCommons*, 131/313, 62 S. E. 230. See *Averett*, 131/613, 62 S. E. 1046. When rule not applied. *Chicago Building &c. Co.*, 139/816, 78 S. E. 244. Rule not relaxed in favor of one who executed note without reading it. *Walton Co.*, 112/319, 37 S. E. 411, 52 L. R. A. 268. Objection not sustained. *American Insurance Co.*, 135/118, 68 S. E. 1026. Parol not received to vary writing that appears to contain entire con-

tract. *Citizens Bank*, 143/101, 84 S. E. 465. Writing not purporting to express entire contract, other parts shown by parol. *Carter*, 114/328, 40 S. E. 290.

Year's-support proceeding, parol not admissible to show due return of, by commissioners. *Selph*, 133/409, 65 S. E. 881. Parol that title was not passed on by ordinary as quasi arbitrator on hearing of objections to application for year's support, admissible. *Dix*, 132/630, 64 S. E. 790.

11. PRESUMPTIONS.

Absence of witness, presumption from. *Morris*, 14 A. 732, 82 S. E. 314.

Presumption not applicable in criminal case. *Whitley*, 14 A. 577, 81 S. E. 797; *Jones*, 14 A. 811, 82 S. E. 470.

Administrator's return, presumption of correctness of, in his own favor, when overcome by slight circumstances. *Willis*, 116/283, 42 S. E. 526.

Alteration in writing, presumption as to when made. *Jewell*, 109/246, 34 S. E. 337.

Agency, presumption of, not arise from acts of alleged agent. *Jones*, 110/373, 35 S. E. 690.

Attorney, presumption of invalidity of purchase of judgment or execution by, from client; and burden of proof of fairness, adequacy of consideration, and equity. *Stubinger*, 116/396, 42 S. E. 713. Presumption of attorney's authority to make party plaintiff. *Morris*, 118/423, 45 S. E. 407. Presumption that attorney had authority to sue for person named as plaintiff, not conclusive. *Bigham*, 114/453, 40 S. E. 303. To have execution levied before necessary reconveyance, none. *Parker*, 114/702, 40 S. E. 724.

Authority to settle, presumption of, not raised by proof of settlement made by attorney or special agent. *Kaiser*, 106/217, 32 S. E. 123. Presumption of authorized signature to execution, when rebutted. *Biggers*, 124/992, 53 S. E. 397.

Bona fide holder of note, presumption as to. Jones, 112/428, 37 S. E. 729, 52 L. R. A. 271.

Building and loan association, presumption that it deposited security and gave bond, until contrary shown. Morgan, 108/185, 33 S. E. 964.

Capacity normal, presumption as to. Holcombe, 5 A. 47, 62 S. E. 647.

Child, presumption that girl of fourteen years is. Stone, 1 A. 292, 57 S. E. 992.

That child's services to parent or relative were rendered from affection and duty, how rebutted. Walker, 104/361, 30 S. E. 867; Murrell, 104/605, 30 S. E. 750. Whether state of having no children continued. Furr, 124/742, 744, 53 S. E. 201.

Common grantor, presumption of title in, raised by admission that defendant claims under him. Garbutt Lumber Co., 126/172, 54 S. E. 944.

Common law presumed of force in other State, if no evidence. Ellington, 127/85, 56 S. E. 134, 119 Am. St. R. 320; Mass. Benefit Asso., 104/276, 30 S. E. 918, 42 L. R. A. 261. Rule of force in other State must be brought to court's attention. Wells, 118/556, 45 S. E. 418.

Condition, presumption against change of. Marshall, 20 A. 424, 93 S. E. 98; A. C. L. R. Co., 21 A. 85, 94 S. E. 65.

Condition bad on April 1-10; no repair until July; bad on April 21. Brown, 101/758, 29 S. E. 215.

Confession free and voluntary not presumed to have sprung from unlawful means that procured a prior confession. Milner, 124/89, 52 S. E. 302.

Corporation, presumption that a named "company" is. Mattox, 115/221, 41 S. E. 709. Presumption that name importing a corporation is such, until contrary appears. Alsobrook, 126/102, 54 S. E. 805. Presumption from name, that person is a corporation rather than a partnership. Leps, 120/140, 47 S. E. 572.

Presumption that members of, are pecuniarily interested in result of suit by it. Clements, 101/62, 28 S. E. 494.

Presumption as to authority of agent or other managing officer of. Minnesota Co., 122/20, 49 S. E. 783; Raleigh R. Co., 122/705, 50 S. E. 1008. Compare Butler, 122/371, 50 S. E. 132; Met. Ins. Co., 122/610, 50 S. E. 337.

County site, presumption of permanent location of, as by statute, when records destroyed. Mitchell, 114/275, 40 S. E. 287.

Court, presumption that session of, continued as long as judge took jurisdiction of term matters. Southern Ry. Co., 120/524, 48 S. E. 160.

Presumption of validity of sessions of, not defeated by misprision of ministerial officer. Cribb, 118/318, 45 S. E. 396.

Of justice of the peace in other State presumed not to be court of record. Sloan, 110/71, 35 S. E. 344.

Presumption that court of other State followed its law and procedure. Epps, 104/699, 30 S. E. 959.

Criminal intercourse of persons under same roof, presumed to continue. Taylor, 110/154, 35 S. E. 161.

Death and life, presumptions as to; sufficiency of evidence. Hansen, 132/648, 64 S. E. 800; Furr, 124/742, 744, 53 S. E. 201. Presumption that death after a year and a day was not proximately caused by injury, when not applied. W. & A. R. Co., 104/390, 30 S. E. 874.

Presumed after seven years absence. Watson, 103/733, 30 S. E. 577; Grand Lodge, 9 A. 71, 70 S. E. 678. No presumption of time of death. Porter, 114/938, 41 S. E. 45.

Presumption of, from long absence. Poole, 22 A. 248, 95 S. E. 935.

Self-inflicted, not presumed suicide. Mutual L. Ins. Co., 9 A. 797, 72 S. E. 295. Presumption against suicide as cause of. Sovereign Camp, 23 A. 760, 99 S. E. 319.

Delivery of deed, record prima facie evidence of; subject to rebuttal. Presumption, how raised. Mays, 137/27, 72 S. E. 408; Watkins, 118/374, 45 S.

Delivery of deed—(Continued).

E. 262; *Parker*, 101/166, 28 S. E. 681; *Brockett*, 18 A. 672, 90 S. E. 366. Presumption overcome by testimony. *Follendore*, 110/361, 35 S. E. 676; *Bourquin*, 110/440, 35 S. E. 710; *Stallings*, 110/875, 36 S. E. 227. See *Williamson*, 110/54, 35 S. E. 301. When not rebutted. *Allen*, 106/775, 32 S. E. 927.

On date of its execution, presumed. *Dorough*, 118/179, 45 S. E. 22. No presumption raised that grantor thereafter had access to it. *McBrayer*, 122/245, 50 S. E. 95.

Presumption of, by trustee entering his acceptance on it. *New S. B. & L. Assn.*, 101/678, 29 S. E. 15.

Demand presumed after lapse of reasonable time. *Teasley*, 110/497, 35 S. E. 782, 78 Am. St. R. 113.

Diligence of master, presumption of. *Portner Co.*, 116/171, 42 S. E. 408.

Disability to sue presumed not to exist. *Arnold*, 122/73, 49 S. E. 812.

Drawee being without fault, presumption that he knew drawer's signature did not avail holder who by negligence contributed to fraud. *Wood*, 114/683, 40 S. E. 720, 56 L. R. A. 929.

Election by devisee to "remain satisfied," presumed after thirteen years possession. *Crumpler*, 114/570, 40 S. E. 808.

Estate, presumption that it was fully administered, not indulged. *Wilson*, 127/310, 56 S. E. 457.

Executor, presumption that possession was held by, in representative capacity. *Alfriend*, 124/566, 52 S. E. 925.

Assent to legacy, presumption of, after long time. *Wright*, 127/369, 370, 56 S. E. 442. Not indulged, after lapse of ten years. *Alfriend*, 124/565, 52 S. E. 925.

Failure to produce evidence, presumption from. *Moye*, 20 A. 649, 93 S. E. 256; *Hyer*, 12 A. 837, 79 S. E. 58; *Ponder*, 18 A. 727, 90 S. E. 376; *Weinkle*, 107/367, 33 S. E. 471; *Southern Express Co.*, 126/472, 55 S. E. 254; *W. & A. R. Co.*, 120/320, 29 S. E. 104; *Southern Ry. Co.*, 9 A. 104, 70

S. E. 352. Not applicable in criminal case. *Williamson*, 9 A. 449, 71 S. E. 509; *Whitley*, 14 A. 577, 81 S. E. 797; *Jones*, 14 A. 811, 82 S. E. 470. When not applicable. *Central Ry. Co.*, 120/83, 47 S. E. 641, 1 Ann. Cas. 806. When not arise. *Davis*, 4 A. 441, 61 S. E. 843; *Lee*, 2 A. 485, 58 S. E. 676. Evidence not warranting charge as to. *Anderson*, 107/500, 33 S. E. 644.

To produce evidence or reliance on weaker and inferior, raises rebuttable presumption of fact. *Brothers*, 140/617, 79 S. E. 468.

To introduce a witness sworn, when no cause to applying rule as to relying on weaker or inferior evidence. *Taggle*, 127/290, 56 S. E. 406. See *Knox*, 112/373, 37 S. E. 416.

Of defendant, since deceased, to testify at former trial, when competent to show. *Wood*, 145/256, 88 S. E. 980.

To introduce witness; when not authorize unfavorable inference. *Citizens National Life Ins. Co.*, 13 A. 30, 78 S. E. 683.

To call witness present in court, legitimate comment on, in argument. *G., F. & A. Ry. Co.*, 4 A. 286, 61 S. E. 505.

To introduce evidence before grand jury, not to render inadmissible. *Bass*, 103/228, 29 S. E. 966.

To introduce testimony in rebuttal of State's evidence in criminal case, proper matter for argument. *Saffold*, 11 A. 329, 333, 75 S. E. 338. Presumption of guilt does not arise where accused could repel charge by calling an accessible witness, but relies on his own statement. *Long*, 126/109, 54 S. E. 906. Non-production of witness, when not give rise to presumption against State, in criminal case. *Harper*, 129/770, 774, 59 S. E. 792.

Filing of petition, presumption as to, when not overcome by fact that it was sworn to at later date. *Steadham*, 141/146, 80 S. E. 624.

Fraud in gift, presumption of, in favor of subsequent purchaser, how rebutted. *Smith*, 2 A. 144, 58 S. E. 303. Pre-

sumption of fraudulent intent in procuring money, etc., on contract to perform services, arising from failure to perform, how overcome. *Sterling*, 126/92, 54 S. E. 921.

Garnishment, presumption that president of bank is agent in charge, as to service of. *Third National Bank*, 108/250, 33 S. E. 848. See, as to service on agent of foreign railroad corporation. *Cathcart*, 108/253, 33 S. E. 875.

Genuineness of writing, when no presumption as to; admissibility of evidence attacking. *Anderson*, 103/767, 30 S. E. 244.

Gift, presumption of. *Thaggard*, 112/327, 37 S. E. 367. How raised and rebutted. *Gould*, 120/50, 47 S. E. 505. Rebuttable by evidence of resulting trust. *Wilder*, 138/573, 576, 75 S. E. 654. Gift of land, presumption of; and sufficiency of proof of possession. *Holloway*, 140/381, 78 S. E. 928.

Hearing, presumption as to. *Holcombe*, 5 A. 47, 53, 62 S. E. 647.

Homestead schedule, presumption that property listed in, is exempt yields as to any not named in claim of exemption in petition. *Blackstone*, 120/78, 47 S. E. 585.

Homicide, presumption from proof of. *Beach*, 138/266, 75 S. E. 139; *Durham*, 138/817, 76 S. E. 351. Accidental homicide, proof required of averments relating to. No presumption. *Travelers Insurance Co.*, 147/608, 95 S. E. 4.

Incorporation, presumption of, from name. *Mattox*, 115/221, 41 S. E. 709.

Innocence of crime charged, presumption of. *McBeth*, 122/739, 50 S. E. 931; *Melvin*, 120/494, 48 S. E. 198. Aided by circumstances, may raise reasonable doubt of guilt. *Sikes*, 120/494, 48 S. E. 153.

Presumption of, overcomes presumption of former marriage, arising from habit and repute. *Roberts*, 114/590, 592, 40 S. E. 702.

Presumption of, remains through trial; not alter conviction. *Vanderford*, 126/70, 54 S. E. 822, 9 Ann. Cas. 617.

Presumption of, when not applicable to conflict of evidence. *Gunn*, 116/325, 42 S. E. 343. How overcome; charge upheld. *Hodge*, 116/852, 43 S. E. 255.

Intent criminal, rule of presumptive evidence as to, when invalid. *Latson*, 136/681, 71 S. E. 1052.

Presumption of, when raised. *Barnes*, 3 A. 333, 59 S. E. 937. When rebutted. *Rickerson*, 3 A. 443, 60 S. E. 114.

Statutory presumption as to; constitutionality of. *Youmans*, 7 A. 110, 66 S. E. 383.

To defraud; presumption and rebuttal. *Smith*, 2 A. 145, 58 S. E. 303; *Denney*, 2 A. 147, 58 S. E. 318.

To defraud, presumptive evidence of, may be rebutted by evidence as a whole. *Mulkey*, 1 A. 522, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284.

To kill, not presumed (in law) from hurling a thick beer-bottle. *Farmer*, 112/81, 37 S. E. 120.

To kill, presumed from killing; not from malicious use of deadly weapon, not resulting in death. *Lanier*, 106/370, 32 S. E. 335; *Stovall*, 106/447, 32 S. E. 586.

To kill; whether presumption arises from use of deadly weapon, a question of fact. *Delk*, 135/313, 69 S. E. 541, 22 Ann. Cas. 105.

To deceive, presumption of, and case of actual fraud. *N. W. Ins. Co.*, 116/799, 43 S. E. 79.

Every one presumed to intend the natural and legitimate consequences of his acts. *Reddick*, 11 A. 150, 74 S. E. 901.

Interest on loan of money by resident of another State, presumption as to rate of. *Hollis*, 104/320, 31 S. E. 215.
Intestacy presumed until proof of will. *Atkinson*, 10 A. 389, 73 S. E. 556.

Judgment of court of general jurisdiction, presumptions in favor of. *Stuckey*, 112/268, 37 S. E. 401, 81 Am. St. R. 47; *Stringfellow*, 112/495, 37 S. E. 767; *Little Rock Co.*, 112/526, 37 S. E. 743; *Jepson*, 116/772, 43 S. E. 75. Limitations of rule as to. *Davis*, 127/518, 56 S. E. 514, 8 L. R. A. (N. S.) 82, 0119 Am. St. R. 352. Presumption of no error in judgment of trial court. *Fenn*, 122/280, 50 S. E. 103; *Field*, 122/504, 50 S. E. 346.

Jurisdiction, court of general; evidence not sufficient to overcome favorable presumption. *Warwick*, 143/511, 85 S. E. 700. Jurisdictional fact not established by presumption that public officer did his duty. *Ray*, 148/204, 96 S. E. 209. Jurisdictional presumption, none in favor of justice's court judgment. *Kuhnen*, 108/471, 34 S. E. 125.

Jurors presumed to be of average intelligence. *Long*, 126/111, 54 S. E. 906. Presumption that juror qualified rightly on voir dire, not rebutted by one witness alone. *Sumner*, 109/142, 34 S. E. 293.

Knowledge of the law, when presumption of, does not obtain. *Ryan*, 104/78, 30 S. E. 678. Presumption that grantor knew the law when he executed trust deed. *Johnson*, 122/526, 50 S. E. 367.

Letter, presumption as to receipt of, where properly addressed and duly mailed; rebuttal of. *Citizens Banking Co.*, 17 A. 692, 87 S. E. 1098; *Strauss*, 15 A. 86, 82 S. E. 578; *Parker*, 15 A. 334, 83 S. E. 158; *American Tie Co.*, 18 A. 640, 90 S. E. 86. What necessary to raise. *National Asso.*, 124/358, 47 S. E. 962. What sufficient to raise. *Burch*, 125/158, 53 S. E. 1008. Overcome by testimony of one witness to contrary. *Hamilton*, 108/476, 34 S. E. 123. Rebutted by uncontradicted evidence. *Cassel*, 10 A. 587, 73 S. E. 858.

Received by mail, when presumed to be that of person whose name is signed to it. *Ragan*, 103/556, 29 S. E. 759.

Presumption as to receipt of, where properly addressed, stamped, and

mailed; no presumption where the evidence was silent as to stamping. *Rawleigh Medical Co.*, 22 A. 493, 96 S. E. 578. Presumption that letter "mailed" was duly stamped, not indulged. *Bankers Co.*, 127/327, 56 S. E. 429.

Not answered in reasonable time, presumption as to admission by silence. *Improved Fertilizer Co.*, 15 A. 611, 84 S. E. 132.

Levy, presumption in favor of. Evidence, when considered in aid of entry of. *Connolly*, 120/213, 215, 4 7S. E. 575; *Miller*, 120/236, 47 S. E. 646.

Lex fori and lex loci, presumption as to. *Wells*, 118/566, 45 S. E. 418.

Life, presumption of continuance of, for seven years. *Poole*, 22 A. 248, 95 S. E. 935.

Continuance of, after seven years absence, when not presumed. *Watson*, 103/733, 30 S. E. 577.

Lost papers, establishment of; presumption that sufficient evidence was adduced. *Humphrey*, 143/704, 85 S. E. 830. Lost or destroyed will; evidence to rebut presumption, on application to probate copy. *Harris*, 138/752, 76 S. E. 40.

Malice, presumption of, from proof of unlawful homicide. *Devereaux*, 140/225, 78 S. E. 849; *Warren*, 140/228, 78 S. E. 836.

Not raised by admission or evidence of homicide, coupled with exculpatory statement or circumstances of mitigation. *Perkins*, 124/6, 52 S. E. 17; *Green*, 124/344, 52 S. E. 431; *Maas*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934.

From circumstantial evidence both of homicide and of connection of deceased therewith. *Campbell*, 124/432, 52 S. E. 914.

When raised on conflicting theories, burden is on accused to prove alleviation excuse, or justification. *Maas*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934.

Rebutted by testimony of either side. *Perry*, 102/366, 30 S. E. 903.

In action of libel. *Cox*, 101/483, 28 S. E. 655.

Marriage presumed from circumstances here. *Wynne*, 17 A. 263, 86 S. E. 823.

No presumption that one is or is not married; but either fact may be inferred from circumstances. *Shattles*, 17 A. 259, 86 S. E. 463; *Jordan*, 120/865, 48 S. E. 352; *Bennett*, 103/67, 29 S. E. 919; *Neil*, 119/15, 43 S. E. 435; *Furr*, 124/742, 744, 53 S. E. 201.

Presumption of, from cohabitation and repute, not prevail against proof of actual marriage of one of the parties to a third person. *Charleston &c. Ry. Co.*, 13 A. 528, 539, 80 S. E. 1097; *Norman*, 113/121, 38 S. E. 317.

Once proved, presumed to continue until proof of legal dissolution. *Wilson*, 108/279, 33 S. E. 975.

Minors; presumption that they could not actively prosecute case in which they were coplaintiffs. *Bigham*, 114/458, 40 S. E. 303.

Minutes of court of ordinary presumed to have been duly signed. *Smith*, 108/198, 33 S. E. 953.

Municipality, presumption that property held by, is for public use. *Walden*, 120/646, 48 S. E. 159. Presumption that municipal officers kept accurate minutes of official action of council. *Town of Jackson*, 116/719, 43 S. E. 53. See *Southern Oil Co.*, 116/776, 43 S. E. 52.

Name in body of affidavit (*Mrs. J. R.*), and in signature (*M. N. R.*), presumed to be of the same person. *Raley*, 120/365, 47 S. E. 972.

Negligence, presumption of, as to railway employee knowing of defects or dangers. *S. C. R. Co.*, 106/807, 32 S. E. 863.

When raised; and what necessary to rebut it. *Georgia Railway &c. Co.*, 133/622, 66 S. E. 944.

Not rebutted by hearsay evidence admitted without objection. *Eastlick*, 116/48, 42 S. E. 499.

On proof of injury to passenger by railroad train. *Ga. R. Co.*, 127/408, 56 S. E. 409.

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Rebutted by testimony of one witness. *Southern Ry. Co.*, 108/166, 33 S. E. 917.

May be overcome by testimony of one witness; but contradiction raises question for jury. *W. & A. R. Co.*, 1 A. 814, 57 S. E. 956.

Overcome by testimony of one witness; aliter if other testimony contradict him. *Louisville R. Co.*, 110/50, 35 S. E. 159; *Hopkins*, 110/85, 35 S. E. 307. For jury. *Fla. Cen. R. Co.*, 110/124, 35 S. E. 283.

Note made by one defendant, indorsed to the other for value and before maturity, when presumed. *McManus*, 143/623, 85 S. E. 858. Presumption in favor of transferee of note. *Walters*, 110/776, 36 S. E. 79.

Notice from letter, presumption of, when not indulged. *Bankers Co.*, 127/326, 56 S. E. 429; *Bush*, 127/309, 56 S. E. 430, 9 Ann. Cas. 240.

Officers, presumption in favor of acts of. *Rucker*, 126/132, 54 S. E. 959. Presumption that officers do duty. *Greer*, 104/552, 30 S. E. 942; *Southern Ry. Co.*, 104/561, 30 S. E. 795; *Huxford*, 124/187, 52 S. E. 439; *Connolly*, 120/213, 47 S. E. 575. May be relied on by party. *Hardy*, 120/385, 388, 47 S. E. 947. Applied where entry of levy did not recite seizure or notice. *Hiles Carver Co.*, 109/180, 34 S. E. 353. Presumption in favor of official return, evidence here insufficient to overcome. *Vickers*, 111/121, 36 S. E. 463.

Ownership continued, presumption of. *American National Bank*, 124/865, 53 S. E. 268.

Parental control presumed not lost. *Pruitt*, 102/688, 29 S. E. 437.

Partnership, presumption as to sale without scope of, and as to knowledge of partner. *Sparks*, 104/323, 30 S. E. 823.

Paternity, presumption of, arising from marriage relation, rebuttable. *Jackson*, 1 A. 724, 58 S. E. 272.

Payment of purchase-money, presumption of, by possession of notes and bond

- for title. *Martin*, 102/72, 29 S. E. 132.
- Physical capacity**, presumption as to. *Holcombe*, 5 A. 47, 62 S. E. 647.
- Place of the contract**, presumption that parties contracted with reference to. *Missouri Ins. Co.*, 1 A. 446, 58 S. E. 93. Presumption from caption and recitals of deed, as to place of its execution. *McCandless*, 101/180, 28 S. E. 663.
- Possession**, presumption as to, in husband, from joint occupancy of land by him and wife. *Bates*, 112/32, 37 S. E. 105. Subject to rebuttal. *Mercer*, 136/632, 71 S. E. 1075.
- Of personalty, presumption of ownership, from, not conclusive. *Harris Co.*, 110/302, 34 S. E. 1003.
- Presumption as to, and burden of proof, in claim case. *Dean*, 112/155, 37 S. E. 176.
- Presumption of, in vendee under bond for title. *Mallard*, 106/504, 32 S. E. 588.
- Of land, presumption from, and from want of inquiry. *Austin*, 122/439, 50 S. E. 382.
- By one of cotenants and payment of rent to him, presumption as to. *Morgan*, 104/598, 30 S. E. 792.
- Proof of certain things**, presumptions from; illustrations. *Wilson*, 136/493, 75 S. E. 619.
- Public road**, presumption of establishment of. *Savannah R. Co.*, 118/748, 45 S. E. 623.
- Railway employee**, presumption of liability for injury to. *Raleigh R. Co.*, 106/572, 32 S. E. 622; *Whitton*, 106/797, 32 S. E. 857.
- Ratification**, presumption of, from slight circumstances. *Noble*, 124/964, 53 S. E. 463.
- Rules of evidence**. Act of 1915; presumption of unlawful intent in possession of liquors. *Gallagher*, 146/807, 92 S. E. 628. C. C. § 4261; prima facie guilt under § 4257. *Arthur*, 146/830, 92 S. E. 637.
- Sanity**, presumption as to. *Holcombe*, 5 A. 47, 54, 62 S. E. 647; *Central Ry. Co.*, 124/841, 53 S. E. 391. Extent of. *Slaughter*, 127/759, 57 S. E. 69, 27 L. R. A. (N. S.) 1. Legal presumption of sound mind and memory, burden of rebutting. *Polk*, 148/34, 95 S. E. 988; *Brown*, 148/265, 96 S. E. 435.
- Seal**, presumption of consideration from. *Slaton*, 124/956, 53 S. E. 567.
- Spoliation of evidence** raises presumption. *Greer*, 138/664, 75 S. E. 1050.
- Stale demand**, doctrine of, rests on presumption. *Ellis*, 112/483, 37 S. E. 739.
- Stolen goods**, presumption from recent possession of. *Scott*, 122/140, 50 S. E. 49. Is of fact, not of law. *Gravitt*, 114/841, 40 S. E. 1003, 88 Am. St. R. 63; *Lewis*, 120/508, 48 S. E. 227.
- "Strongest" proof**, to rebut presumption; error in charge that such proof was necessary. *Vickers*, 128/794, 58 S. E. 44.
- Testator's intent** to dispose of whole estate, presumption of. *Glore*, 124/924, 53 S. E. 690. Presumption that cestui que trust (son) was, in opinion of testator (father), not fit to take charge of property, rebuttable. *Collins*, 118/207, 44 S. E. 1000.
- Title** presumed to continue, until contrary shown. *Sasser*, 8 A. 824, 70 S. E. 157.
- Presumption of, from possession, not rebutted by deed from stranger, without further evidence. *Clements*, 106/448, 32 S. E. 584.
- Usage of commerce**, presumption that contract was made in light of. *Watson*, 127/300, 56 S. E. 459.
- Validity of contract**, presumption of. *Red Cypress Co.*, 118/879, 45 S. E. 674.
- Valuation**, presumption that excess of, paid in cash, was legally distributed. *Groover*, 118/493, 45 S. E. 310.
- Verdict**, presumption in favor of. *Scribner*, 1 A. 527, 58 S. E. 240; *Southern Ry. Co.*, 1 A. 734, 58 S. E. 244. Presumption that verdict is based on count that will uphold it, rather than on another that will not. *Hay*, 118/249, 44 S. E. 1002.

Will lost, presumption as to revocation of; not overcome by proof here. *Scott*, 113/795, 39 S. E. 500, 84 Am. St. R. 263. **Revocation of will lost or destroyed, rebuttal of presumption as to.** *Harris*, 138/752, 76 S. E. 40.

Presumption of revocation of, when arises. *McIntyre*, 120/67, 47 S. E. 501, 102 Am. St. R. 71, 1 Ann. Cas. 606. **Writing, genuineness of, no presumption as to, when.** *Anderson*, 103/767, 30 S. E. 244. **Presumption that understandings are embodied in the written contract.** *Butler*, 122/371, 50 S. E. 132. **Presumption that writing purporting to embrace complete agreement embraces all stipulations.** *Williams*, 124/913, 53 S. E. 564.

12. RES GESTÆ.

Accomplice. See *Evidence* 1, catchword, "Accomplice."

Acts and circumstances admissible as part of res gestæ in continuation of main transaction. *Floyd*, 143/286, 84 S. E. 971.

Agent, statements of, when a part of res gestæ. *A. C. L. R. Co.*, 21 A. 455, 94 S. E. 584; *Southern Express Co.*, 13 A. 177, 78 S. E. 1111; *C. & W. C. Ry. Co.*, 13 A. 750, 79 S. E. 932; *Sizer*, 129/148, 58 S. E. 1055.

Check and account of sale by, admissible as part of res gestæ of agency, when. *Shippey*, 17 A. 128, 86 S. E. 407.

Declarations by, admissible as res gestæ. *Citizens Bank*, 15 A. 815, 84 S. E. 232. **Declarations as to business of principal must be part of res gestæ.** *National Asso.*, 120/358, 47 S. E. 962. **Declarations here were no part of res gestæ.** *Miller*, 126/749, 55 S. E. 952. **Declaration as to agency, when part of res gestæ.** *Heitmann*, 7 A. 740, 68 S. E. 51; *Rome Ins. Co.*, 11 A. 539, 541, 75 S. E. 894.

Admission of, as part of res gestæ, admissibility of. *William Hester Marble Co.*, 22 A. 433, 96 S. E. 269; *Albany Ry. Co.*, 8 A. 175, 68 S. E. 868.

See *Evidence*, 2, catchword, "Agent."

Assault, res gestæ of, bystander's remark to person assaulted, that the assailant was trying to kill him with a gun. *Dunham*, 8 A. 668, 70 S. E. 111.

Other acts of violence than that charged, admissible as part of res gestæ of assault, when. *Carter*, 15 A. 343, 83 S. E. 153.

Statements of assailant and a bystander, just as assault was made, admissible as res gestæ. *Smith*, 10 A. 37, 72 S. E. 527.

Battery, conversation immediately after, admissible as part of res gestæ. *Moody*, 120/868, 48 S. E. 340.

Bond, admissions of principal in, during transaction of the business for which surety is bound. *Bailey*, 122/617, 50 S. E. 388.

Books of account, admissibility of, as part of res gestæ. *Bush*, 3 A. 46, 59 S. E. 459. **Account-books are part of res gestæ as to when firm began business.** *Cody*, 103/789, 30 S. E. 281. **Bank books admissible to show that title to paper deposited passed to bank.** *Baldwin Bank*, 144/181, 86 S. E. 538.

Burning, statements by person burned, soon after, as res gestæ of. *Walker*, 137/398, 73 S. E. 368.

Bystander, sayings of, during an affray, admissible, when. *Hill*, 17 A. 294, 86 S. E. 657.

Declaration of, in answer to inquiry, "Who was that shot me?" *Knight*, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Statement of, and of accused just after the shooting. *Fuller*, 127/47, 55 S. E. 1047.

Exclamations or cries of bystanders, when admissible as part of res gestæ. *Atlanta Con. St. Ry. Co.*, 107/161, 33 S. E. 191.

Child's statements as part of res gestæ, admissibility of. *Williams*, 11 A. 663, 75 S. E. 988. **Child's age considered in determining whether, under the res gestæ rule, her declarations were free from device or afterthought.** *Berry*, 9 A. 868, 72 S. E. 433.

Claim of right, to do act for which indicted, not admissible unless made dum fervet opus, and was part of *res gestæ*. *Fraser*, 112/13, 37 S. E. 114.

Complaints or expressions of pain may be part of *res gestæ*. *Powell*, 101/10, 29 S. E. 65 Am. St. R. 277. Complaints of pain, whether admissible. *Central of Ga. Ry. Co.*, 22 A. 35, 95 S. E. 323. Complaints not part of *res gestæ*, not admissible on trial for assault with intent to rape, when. *Jackson*, 20 A. 721, 93 S. E. 230.

Conduct constituting part of *res gestæ* of homicide. *Dunn*, 16 A. 9, 84 S. E. 488.

Declarations explanatory of conduct as part of *res gestæ*. *Drawdy*, 130/168, 60 S. E. 451, 15 L. R. A. (N. S.) 190.

Conductor statement by, to engineer "some minutes" after injury to person falling from train, not admissible as part of *res gestæ*. *Southern Ry. Co.*, 18 A. 544, 557, 90 S. E. 94. Whether statements of engineer and conductor as to homicide by train were admissible as part of. *Central Ry. Co.*, 18 A. 114, 88 S. E. 1003.

Conspirators. See **Evidence 1**, catchword "Conspiracy," and **Evidence 2**, catchword "Conspirator."

Contract, declarations in connection with procurement of, part of *res gestæ* of the transaction, admitted. *Third National Bank*, 19 A. 212, 91 S. E. 346.

Conversation immediately after battery, admissible on trial therefor. *Moody*, 120/868, 48 S. E. 340. *Res gestæ* of conversation, matters admissible 'as. *Holcombe*, 5 A. 48, 62 S. E. 647.

Crime, declarations not sufficient to convict of, in the absence of other evidence establishing a principal fact. *Williams*, 11 A. 663, 75 S. E. 988.

Declarations, admissibility of, as part of *res gestæ*. *Smith*, 13 A. 837, 839, 80 S. E. 1051; *Atlanta &c. R. Co.*, 133/231, 65 S. E. 437. *Tucker*, 133/470, 66 S. E. 250. Declarations of brakeman knocked from car. *Southern Ry. Co.*, 126/1, 3, 54 S. E. 911. Declarations not part of *res gestæ*. *Sullivan*, 101/800, 29 S. E. 16.

Rule as to when declarations are admissible as *res gestæ*, discussed, and cases collected. *Standard Oil Co.*, 15 A. 571, 579, 84 S. E. 69.

Deed, declarations and documents tending to show intention of maker of, when admissible as part of *res gestæ*. *Cohen*, 105/351, 31 S. E. 205.

Definition of *res gestæ*, none adequate to all conditions. *Walker*, 137/401, 73 S. E. 368.

Delivery, declarations of person making, admitted as part of *res gestæ*. *Atlantic Compress Co.*, 15 A. 747, 84 S. E. 155.

Dying declaration, what admissible as part of *res gestæ* in. *Bush*, 109/123, 34 S. E. 298. When not admissible as part of *res gestæ* of homicide. *Taylor*, 120/857, 48 S. E. 361.

Employee, statements of, reporting injury, when admitted as *res gestæ*. *A. C. L. R. Co.*, 8 A. 190, 196, 68 S. E. 875.

Injured, sayings of foreman to, were not *res gestæ*. *Brush Co.*, 103/512, 30 S. E. 533.

Statements of, as part of *res gestæ*, not binding on employer. *Crankshaw*, 1 A. 371, 58 S. E. 222.

Error in excluding statements admissible as *res gestæ* was immaterial, in view of other testimony. *Mineola Mill Co.*, 18 A. 668, 90 S. E. 360. Statement, after fight, that accused hit him with a rock, if not part of *res gestæ*, harmless error to admit. *Dill*, 106/683, 32 S. E. 660. *Res gestæ* excluded, when no error for reversal. *Cesar*, 127/716, 57 S. E. 66.

Exclamations manifesting existence of pain are *res gestæ*, when. *Southern Ry. Co.*, 10 A. 532, 73 S. E. 763.

Involuntary, of pain, are part of *res gestæ*; distinct from complaints of past sensations. *Atlanta R. Co.*, 122/99, 49 S. E. 818. Exclamation upon receiving wound is part of. *Goodman*, 122/111, 49 S. E. 922.

By injured person, as *res gestæ*. *Girvin*, 143/762, 763, 85 S. E. 922.

Of one present at crime, merely opinion or conclusion, not admitted as *res gestæ*. *Harnage*, 7 A. 573, 67 S. E. 694.

Part of *res gestæ*. *Harnage*, 7 A. 573, 67 S. E. 694.

Part of *res gestæ*, explanatory statements not; locomotive engineer's statements of cause of homicide by train. *Kemp*, 122/560, 50 S. E. 465. See *Weinkle*, 107/370, 33 S. E. 471.

Homicide, *res gestæ* of, admissible. *Helms*, 138/826, 76 S. E. 353; *Weldon*, 21 A. 332, 94 S. E. 826; *Scrutchens*, 146/189, 91 S. E. 25.

All facts making up *res gestæ* of, including conduct and language of parties, admissible. *Robinson*, 118/198, 44 S. E. 985; *Price*, 137/71, 72 S. E. 908.

Declarations of slayer of wife here not admissible as *res gestæ*. *Lyles*, 130/295, 60 S. E. 578. Prayer of man mortally wounded was part of. *Herrington*, 130/307, 60 S. E. 572. Dissent: it was irrelevant. *Ib.* 319.

Narration by slayer as to, made to arresting officer just after the killing, not admitted. *Hightower*, 9 A. 236, 70 S. E. 1022.

Shooting at sister of slain man, and her screams for help, admissible. *Arnold*, 131/494, 62 S. E. 806.

Shooting of other person immediately before shooting wife of accused. *Lampkin*, 145/40, 88 S. E. 563.

Res gestæ of, that accused on trial for shooting one fired successively on two persons. *Glover*, 137/82, 72 S. E. 926.

Statement by slayer, after walking from place of killing to opposite side of street, that he "had to do it," not admitted as. *Carswell*, 10 A. 30, 72 S. E. 602.

Slayer's statement that he shot unintentionally, made in less than two minutes after shooting, admissible, under circumstances here. *Darby*, 9 A. 700, 72 S. E. 182.

Slayer's statement on starting to place of, admitted. His statement five minutes after homicide not admitted. *Warrick*, 125/133, 139, 53 S. E. 1027. Slayer's statement "less than five minutes" after, when not admitted. *Park*, 126/575, 55 S. E. 489.

Slayer's declaration, "several minutes after" shooting, that it was accidental. excluded. *Cobb*, 11 A. 53, 59, 74 S. E. 702.

Statements of deceased before homicide were no part of *res gestæ*. *Roberts*, 145/79, 88 S. E. 559.

Policeman's statements about homicide, not admitted. *Supreme Council*, 23 A. 104, 97 S. E. 557.

Injured person, statement of, 10 or 15 minutes after injury, was no part of *res gestæ*. *Cole*, 125/276, 53 S. E. 958. See *McBride*, 125/515, 4 S. E. 674.

Statements of, 16 hours after the injury, as to its cause, were not *res gestæ*. *Fulton*, 19 A. 127, 91 S. E. 228.

Testimony of, as to injuries to others at the same time, admitted as part of *res gestæ*. *Southern Ry. Co.*, 19 A. 545, 91 S. E. 1001.

Declaration of (made "about three minutes after the train passed"), that a train of the defendant ran over him, admitted. *W. & A. R. Co.*, 14 A. 388, 80 S. E. 916. *Res gestæ* of injury by train. *Southern Ry. Co.*, 129/842, 60 S. E. 157.

Narrative of injury by, was not *res gestæ*. *W. & A. R. Co.*, 112/553, 37 S. E. 863.

Statement by, made a half hour after injury, as to the circumstances under which it occurred, not admissible as *res gestæ*. *White*, 123/353, 51 S. E. 411.

Statement of injured servant admissible as part of *res gestæ*. *Charleston &c. Ry. Co.*, 141/127, 80 S. E. 278.

Larceny, *res gestæ* of. *Lanier*, 126/586, 55 S. E. 496.

Law, admissibility of *res gestæ* is a question of, for the court; weight to be determined by jury. *Rouse*, 135/227, 69 S. E. 180. Can it ever be a mixed question of law and fact, for submission to jury? *Southern Ry. Co.*, 126/1, 54 S. E. 911. Charge of court as to what the jury were to determine was possibly error, but not ground for new trial. *Harden*, 21 A. 218, 94 S. E. 263.

Liquor, giving of money to person to buy, and his statement, upon going into

- house, that liquor could be bought there, admissible, when. *Carewell*, 7 A. 199, 66 S. E. 488.
- Marriage**, declarations of man and woman pending cohabitation, as to fact of. *Oliver*, 7 A. 698, 67 S. E. 886.
- Murder**, *res gestæ* of; declaration of infant. *Grant*, 124/759, 53 S. E. 334. Statement of one jointly indicted with accused of murder, separately tried, was of part of *res gestæ*. *Gibbs*, 144/166, 86 S. E. 543.
- New trial**, what should appear in ground of motion for, where complaint is made as to exclusion of declarations alleged to be part of *res gestæ*; ground incomplete as to time. *Reeves*, 22 A. 628, 97 S. E. 115.
- Ordinance**, evidence of violation of, by railroad company, admissible as part of *res gestæ* here. *Macon Consol. R. Co.*, 113/212, 38 S. E. 756.
- Principal**, declarations of, when not admissible against alleged accessory, as. *Howard*, 109/137, 34 S. E. 330.
- Rape**, statements constituting part of *res gestæ* of assault with intent to. *Williams*, 15 A. 306, 310, 82 S. E. 938. Sayings of father of alleged victim in rape case, when admissible as *res gestæ*. *Merritt*, 107/675, 34 S. E. 361.
- Receipt** for money, as *res gestæ*. *Barber*, 143/432, 85 S. E. 321.
- Relevancy** essential to admission of evidence, including declarations as part of *res gestæ*. *Herrington*, 130/307, 320, 60 S. E. 572.
- Rule** that a statement which assists to constitute the transaction or to prove per se a relevant fact is competent. *Atlantic Compress Co.*, 15 A. 748, 84 S. E. 155.
- Second fight** half an hour after the first, when not material to investigation of first fight. *City Ry. Co.*, 101/33, 28 S. E. 508.
- Self-serving narrative** here was not admissible as *res gestæ*. *Deal*, 18 A. 70, 83 S. E. 902.
- Shooting**, admissibility of statements as *res gestæ*, made eight or ten minutes after. *Jefferson*, 137/383, 73 S. E. 499.
- Statement of person shot, made immediately after the shooting, admissible. *Amerson*, 18 A. 177, 88 S. E. 998.
- Declarations that person named shot declarant for nothing, admissible under the circumstances. *Crumley*, 23 A. 312, 98 S. E. 230.
- Sayings of deceased, a few minutes after he was shot. *Milam*, 108/29, 33 S. E. 818.
- Statement of wounded person that he was shot, immediately after pistol fired, admissible. *Gaines*, 108/772, 33 S. E. 632.
- Statements** admissible as *res gestæ*. *A. C. L. R. Co.*, 14 A. 620, 82 S. E. 299.
- Of defendant, after act committed, were not *res gestæ*. *Williams*, 108/748, 32 S. E. 660.
- By accused in his own favor, held not part of *res gestæ*, made at different time and place. *Woods*, 137/85, 72 S. E. 908.
- Just before encounter, by one party, near enough to be heard by the other, admissible, when. *Hightower*, 9 A. 236, 239, 70 S. E. 1022.
- Of accused after act were not in nature of *res gestæ*, and were not admissible. *Gibbons*, 137/786, 74 S. E. 549.
- Stolen goods**, declarations of accused contemporaneously with or when first required by circumstances to account for possession of, are admissible as *res gestæ*. *Lanier*, 126/586, 55 S. E. 496.
- Testimony** admissible as *res gestæ*. *Dudley*, 18 A. 509, 89 S. E. 599.
- Time** as affecting question whether sayings are part of *res gestæ*. *Cobb*, 11 A. 53, 59, 74 S. E. 702.
- Declarations of accused, in a half-minute after killing, when not admitted. *Thornton*, 107/683, 33 S. E. 673. Made twenty minutes after the shooting not admissible. *District Grand Lodge*, 18 A. 612, 89 S. E. 1094.
- Declarations made 55 minutes before homicide, not part of. *Polk*, 18 A. 324, 89 S. E. 437.
- Statement of deceased "soon" after shot, not admissible as *res gestæ* here; showing as to time, insufficient. *Suther-*

land, 121/190, 48 S. E. 915. "Immediately," too indefinite. *Pool*, 123/206, 51 S. E. 328.

Tracks, identify of, as *res gestæ*. *Thomas*, 143/268, 84 S. E. 587.

Wife, declarations of, to husband on his reaching her three or four minutes after fatally injured from explosion, as to its cause, admitted. *Standard Oil Co.*, 15 A. 571, 579, 84 S. E. 69.

Statements of, constituting part of *res gestæ*, not admissible against husband. *Wicker*, 14 A. 665, 82 S. E. 58.

Husband's statement that "the account was his wife's," not admissible as *res gestæ* of purchase, here. *Leake*, 5 A. 102, 62 S. E. 729.

Wounded person, statement of, as *res gestæ*. *Cason*, 134/786, 68 S. E. 554.

Statements of, as to who cut him; whether admissible as part of *res gestæ*, immaterial, in view of admissions. *Shields*, 22 A. 618, 97 S. E. 90.

Statement of, a few minutes after attack, held not admissible. *Hunter*, 147/823, 95 S. E. 668.

Writing, language repeated to accused as contents of, when admissible. *Kerr*, 105/656, 31 S. E. 739.

13. SUFFICIENCY AND WEIGHT.

Abandonment, when not shown by mere non-user, without other evidence of intent. *Mayor &c. of Savannah*, 148/317, 321, 96 S. E. 625.

Accessory before the fact; effect of plea of guilty of one jointly indicted as principal. *Cantrell*, 141/98, 80 S. E. 649.

Accomplice, corroboration of. *Baker*, 121/189, 48 S. E. 967; *Harrell*, 121/607, 49 S. E. 703; *Walker*, 118/34, 44 S. E. 850. Conviction on testimony of. *Stone*, 118/705, 45 S. E. 630, 98 Am. St. R. 145. Accessory after the fact is not accomplice. *Id.*; *Walker*, 118/727, 45 S. E. 608. Female raped not accomplice, but corroboration required. *Davis*, 120/438, 439, 48 S. E. 180. In incest. *Solomon*, 113/192, 38 S. E. 332; *Yother*, 120/204, 47 S. E. 555; *Durden*, 120/860, 48 S. E.

315. Receiver of stolen goods, principal thief not accomplice of. *Birdsong*, 120/850, 854, 48 S. E. 329, 330.

Must connect the accused, not merely raise grave suspicion. *Taylor*, 110/151, 35 S. E. 161.

What necessary. Issue whether acts were under threats and menaces. *Montford*, 144/582, 87 S. E. 797.

What sufficient; a matter for the jury. *Hargrove*, 125/270, 54 S. E. 164.

What sufficient in felony. *Dixon*, 116/186, 42 S. E. 357.

By circumstances in larceny. *McCroory*, 101/779, 28 S. E. 921.

Sufficiency of. *Rawlins*, 124/49, 52 S. E. 1. Erroneous charge to jury. *Chapman*, 109/158, 34 S. E. 369.

Insufficient here. *Smith*, 5 A. 833, 63 S. E. 917. Proof of *corpus delicti*, not sufficient corroboration of accomplice. *Altman*, 5 A. 833, 63 S. E. 928.

What necessary, and sufficient. *Chapman*, 112/56, 37 S. E. 102; *Milner*, 7 A. 82, 66 S. E. 280; *Smith*, 7 A. 781, 68 S. E. 335. Not essential in misdemeanor case. *Beaty*, 7 A. 328, 66 S. E. 808. *Gamble*, 4 A. 845, 62 S. E. 544.

Account and settlement between partners; *prima facie* case made. *Garrett*, 104/84, 30 S. E. 685.

Sued on, evidence insufficient to show its correctness, recovery not sustained. *McCoy*, 140/253, 78 S. E. 848.

Evidence insufficient to show account stated. *Moore*, 144/648, 87 S. E. 915.

Acknowledgment by testator of his signature to will, how inferred. *Shewmake*, 144/801, 87 S. E. 1046.

Adjudication in former suit not conclusive of liability where plaintiff sued, first, as next friend, second, for loss of minor's services. *Hooper*, 112/99, 37 S. E. 165.

Administration, debt as ground for; what proof sufficient. *Conyers*, 109/190, 34 S. E. 279.

Testimony to show want of, must include examination of records of court of ordinary. *Grooms*, 147/206, 93 S. E. 201.

Adoption of child, testimony of decedent's declarations made no case of. *Rahn*, 144/644, 87 S. E. 1061.

Affirmative and positive, not overcome by negative, or by opinions. *Hambright*, 112/36, 37 S. E. 99.

Agency express or implied; proof insufficient. *Bank*, 101/105, 28 S. E. 168.

Insufficient evidence as to. *Becker*, 133/867, 67 S. E. 92.

Not here implied from course of dealings. *Bank of University*, 101/112, 28 S. E. 168.

To sell land, in attorneys, evidence insufficient to prove. *Spinks*, 108/377, 33 S. E. 1003.

Evidence raised issue whether person acted as. *Terry*, 138/656, 75 S. E. 1044.

Authority to admit liability, not inferred from authority to sign bond for defendant. *Mitchell Co.*, 143/516, 85 S. E. 635.

Want of authority, evidence insufficient to show purchaser's knowledge of. *Turner*, 143/44, 84 S. E. 116.

Allegata et probata. See Evidence 1, catchwords, "Allegata and probata."

Ambiguous testimony of party, construed against him. *City of Thomasville*, 22 A. 384, 96 S. E. 335; *Johnson*, 9 A. 661, 72 S. E. 66.

Amount, insufficient data to enable jury to estimate with reasonable certainty. *Crouch*, 9 A. 695, 72 S. E. 61; *Branch*, 9 A. 700, 71 S. E. 1123.

Evidence too indefinite to warrant verdict for fixed amount, though authorizing a finding that some amount was due. *Clegg Lumber Co.*, 123/603, 51 S. E. 575.

Arson, evidence not sufficient to convict. *Boatwright*, 103/430, 30 S. E. 256.

Assault sufficiently proved. *Price*, 118/60, 44 S. E. 820; *Robinson*, 118/750, 45 S. E. 620.

Assault to rape, evidence not warranting conviction of. *Hicks*, 105/627, 31 S. E. 579.

Assignment, evidence of, in writing, what sufficient. *Southern Mutual Assn.*, 132/

496, 499, 64 S. E. 264, 131 Am. St. R. 210.

Of fund by city, evidence not sufficient to show. *Green*, 135/387, 69 S. E. 544.

Written, not shown by the words "transferred to an assignee." *Kirkland*, 103/130, 29 S. E. 612.

Authority of corporate officer to contract, by-laws and other evidence showing. *Potts-Thompson Co.*, 135/452, 69 S. E. 734.

Of corporation's officer, testimony that he was the active head of it, was not sufficient to raise presumption of. *Brown*, 132/44, 68 S. E. 788.

Of person acting as employee on train, facts from which inferred. *Coursey*, 113/298, 38 S. E. 866.

Bankruptcy, evidence not sufficient that debt was duly scheduled in. *Marshall*, 127/376, 56 S. E. 449.

Bastard chargeable to county, sufficiently shown by granting of order by ordinary for payment of expenses and actual payment. *McTier*, 120/878, 48 S. E. 355.

Bona fides of holder of note, circumstances insufficient to call in question. *Edwards*, 144/514, 87 S. E. 657.

Of purchase by claimant, verdict against, not warranted by evidence here. *Cronan*, 107/295, 33 S. E. 56.

Boundary, sufficiency of evidence as to. *Frey*, 23 A. 160, 97 S. E. 753; *Brooks*, 23 A. 800, 99 S. E. 540.

Processioners' return, when not prima facie proof of. *Eubank*, 105/614, 31 S. E. 741.

Sufficiently shown to support description in deed. *O'Farrell*, 134/696, 68 S. E. 485.

Breach of warranty by eviction not shown by mere notice by third person of claim that an article purchased infringes a patent owned by him. *Consolidated Phosphate Co.*, 20 A. 474, 93 S. E. 155.

Breaking and entering railroad-car, circumstances sufficient to show. *Gilbert*, 116/819, 48 S. E. 47.

Burglary; breaking and entering not proved by showing loss of goods. *Lester*, 106/372, 32 S. E. 335. But see *Humphries*, 149/481, 100 S. E. 637.

Cancellation of will not effected by entry thereon. *Howard*, 115/357, 41 S. E. 638, 90 Am. St. R. 121.

Child, declarations of, when insufficient to convict of crime. *Williams*, 11 A. 663, 75 S. E. 988. Child's understanding of nature of oath, not shown by answers 584, 54 S. E. 82. Shown by answers, here. *Miller*, 109/512, 35 S. E. 152. Shown by answers here. *Young*, 125/584, 54 S. E. 82. Shown by answers no error in not submitting question of competency to jury. *Hicks*, 105/627, 31 S. E. 579.

Circumstantial evidence, consistent with innocence, no basis of conviction of crime. *Henderson*, 147/134, 92 S. E. 871.

Of guilt, insufficient to how knowledge of falsity of representations. *Carlisle*, 2 A. 651, 58 S. E. 1068. Corpus delicti may be proved by. *Miles*, 129/589, 59 S. E. 274; *Ray*, 4 A. 70, 60 S. E. 816; *Hutchings*, 4 A. 453, 61 S. E. 837.

Establishing guilt of murder. *Elliot*, 138/24, 74 S. E. 691.

As to indebtedness of garnishee, sufficient here. *Harper*, 7 A. 374, 66 S. E. 990. As to negligence; proper charge to jury on. *Central Ry. Co.*, 7 A. 771, 68 S. E. 339.

Comparative weight of circumstantial and direct. *Armstrong*, 105/230, 31 S. E. 158; *Joiner*, 105/646, 31 S. E. 556. Comparative weight, for jury; erroneous instructions as to. *Hudson*, 104/131, 30 S. E. 688.

As to authority of agent. *Sherrod*, 21 A. 200, 93 S. E. 1009.

To establish plaintiff's case, must preponderate to theory relied on for recovery, rather than to other reasonable hypothesis. *A. C. L. R. Co.*, 21 A. 85, 94 S. E. 65.

Did not uphold conviction of larceny. *Stiles*, 113/700, 39 S. E. 295.

Not uphold conviction of murder. *Williams*, 113/721, 39 S. E. 487; *Shigg*, 115/212, 41 S. E. 694.

Here was insufficient to warrant conviction of arson. *Green*, 110/139, 36 S. E. 609.

Of carrying pistol to public gathering, not sufficient to exclude every reasonable hypothesis but that of guilt. *Amorous*, 1 A. 313, 57 S. E. 999.

Of execution of instrument, when sufficient to authorize admission of proved copy. *Proctor & Gamble Co.*, 128/607, 618, 57 S. E. 879.

Of larceny, legally sufficient. *Sheffield*, 1 A. 135, 57 S. E. 969.

Raising a suspicion of guilt, no basis for conviction of crime. *New*, 124/143, 52 S. E. 160. When sufficient both as to corpus delicti and as to connection of accused. *Campbell*, 124/432, 52 S. E. 914.

Sufficiency of, for conviction. Cow-stealing. *Watson*, 118/66, 44 S. E. 803. Arson. *Bines*, 118/320, 45 S. E. 376, 68 L. R. A. 33, and see *Butts*, 118/750, 45 S. E. 593. Hog-stealing, *Jackson*, 118/780, 45 S. E. 604. Wrecking train. *Murphy*, 118/780, 45 S. E. 609.

In murder case. *Laws*, 114/10, 39 S. E. 883; *Robinson*, 114/56, 39 S. E. 862; *Cook*, 114/523, 40 S. E. 703. For finding of negligence. *Central Ry. Co.*, 114/313, 40 S. E. 259. Identity of burglar. *Glover*, 114/828, 40 S. E. 998.

Rule as to character of, required to sustain conviction of crime. *Warren*, 148/405, 96 S. E. 867; *Patton*, 117/230, 43 S. E. 533.

Sufficient to establish venue. *McCoy*, 123/145, 51 S. E. 279.

Sufficient to exclude hypothesis other than that of guilt. *Smith*, 146/76, 90 S. E. 713. *Aliter*, *Smith*, 146/107, 90 S. E. 707. Authorizing reasonable theory other than that of guilt, not uphold conviction. *Barker*, 4 A. 273, 61 S. E. 133; *Laster*, 4 A. 804, 62 S. E. 508.

Sufficient to show engagement to marry. *Graves*, 123/229, 51 S. E. 318.

Circumstantial evidence—(Continued).

When insufficient for conviction. *Black*, 112/29, 37 S. E. 108. In burglary. *Andrews*, 116/83, 42 S. E. 476.

Will not authorize recovery, where positive and uncontradictory testimony, consistent therewith, negatives the alleged fact indicated thereby. *Frazier*, 108/807, 33 S. E. 996.

Strength of, required to support conviction. *Scroggs*, 147/737, 738, 95 S. E. 226.

Sufficiency in civil case. *Central of Ga. Ry. Co.*, 23 A. 26, 97 S. E. 461.

Conclusions that may, and may not, be drawn from circumstances proved. *Hicks*, 101/581, 28 S. E. 917; *Coney*, 101/582, 28 S. E. 918.

Coercion of accused, circumstances showing. *Elder*, 143/363, 85 S. E. 97.

Commission on sale, evidence insufficient for recovery, not showing percentage for arriving at amount. *Jordan & Co.*, 148/23, 95 S. E. 679.

Consent to sell liquor, evidence sufficient to show, notwithstanding refusal to sell. *Smith*, 9 A. 231, 70 S. E. 969.

Copy deed, establishment of; failure of evidence. *Clements*, 101/62, 28 S. E. 494.

Corpus delicti, circumstances proving. *Wilburn*, 141/510, 81 S. E. 444.

Corroboration, extent of; and when sufficient though circumstances slight. *Parham*, 3 A. 468, 60 S. E. 123. Sufficiency of, in prosecution for perjury. 105/594, 31 S. E. 567.

Of confession, sufficiency of evidence, for jury, not charge of court. *Coley*, 110/271, 34 S. E. 845. Sufficient here. *Smith*, 125/298, 54 S. E. 127.

Countermand of order for goods, evidence not sufficient to show reception of, before their shipment. *National Novelty Co.*, 144/581, 87 S. E. 770.

Conflicting evidence, and credibility of witnesses, for determination by jury. Factum of will. *Brock*, 140/590, 79 S. E. 473; *Connally*, 112/196, 37 S. E. 379; *Isham*, 112/406, 37 S. E. 735; *Webb*, 112/432, 37 S. E. 710; *Atlanta Con. St. Ry. Co.*, 108/226, 33 S. E.

886; *Ferst*, 108/792, 33 S. E. 951; *Southern Bank*, 108/796, 33 S. E. 974.

Charge of court as to conflicting testimony, not misleading. *Blanchard*, 8 A. 420, 69 S. E. 313.

Discretion of judge as to, on motion for new trial. *Sykes*, 3 A. 204, 59 S. E. 594.

Duty of jury to reconcile; and as to imputation of perjury. *Hunter*, 136/103, 70 S. E. 643; *Brandon*, 133/480, 66 S. E. 247; *Chicago Building & Co.*, 139/817, 78 S. E. 244; *Georgia Ry. & Co.*, 137/720, 74 S. E. 244; *Moore*, 8 A. 78.

Good character of accused may be considered in reconciling. *Maddox*, 118/69, 44 S. E. 822.

Questions dependent on, treated as settled in trial court. *Moore*, 118/253, 45 S. E. 279; *Gilmore*, 118/299, 45 S. E. 226; *Templeton*, 118/552, 45 S. E. 433; *Featherston Co.*, 118/564, 45 S. E. 414; *Hames*, 141/227, 80 S. E. 711.

Settled by verdict, subject to review by trial judge, not by court of errors. *Waldrop*, 114/610, 40 S. E. 830.

Error in charge as to. *Southern Mutual Ins. Co.*, 113/434, 38 S. E. 964; *Wall*, 6 A. 732, 65 S. E. 788.

Prevents direction of verdict. *Davis*, 1 A. 5, 58 S. E. 209. Direction of verdict not error because of conflict which is immaterial. *Shedd*, 21 A. 373, 94 S. E. 646. *Dorris*, 22 A. 514, 96 S. E. 450.

Settled by finding of judge without jury. *Barnett*, 101/32, 28 S. E. 495. Conspiracy, issue as to existence of, for jury. Prima facie proof of, to admit evidence. *Smith*, 148/332, 96 S. E. 632.

Shown by circumstantial evidence. Prima facie evidence of, as basis for introduction of acts and declarations of alleged conspirator; sufficiency of such evidence to be determined finally by jury. *Cook*, 22 A. 771, 97 S. E. 264. Construction of party's testimony, against him, where fairly open to two constructions. *Johnson*, 9 A. 661, 72 S. E. 66;

Columbus R. Co., 12 A. 676, 78 S. E. 52; Peninsular Naval Stores Co., 13 A. 781, 80 S. E. 28; Armstrong, 118/168, 44 S. E. 996; Farmer, 118/289, 45 S. E. 244.

Against party testifying, when self-contradictory, vague, or equivocal. Southern Ry. Co., 121/428, 49 S. E. 294; Tuten, 4 A. 353, 61 S. E. 511; Steele, 123/237, 51 S. E. 438; Horne, 122/455, 49 S. E. 722; Charleston & Ry. Co., 13 A. 528, 80 S. E. 1097; So. Cotton Oil Co., 23 A. 478, 98 S. E. 408; This is not for charge to jury. Central Ry. Co., 135/525, 69 S. E. 818.

Most favorable to plaintiff, on motion for nonsuit. Henry, 140/477, 79 S. E. 115.

Of word or phrase in a sense different from its usual meaning. S. A. L. Ry., 12 A. 206, 77 S. E. 12.

Contradictory evidence, construction of. Peninsular Naval Stores Co., 13 A. 781, 80 S. E. 28.

Offered to rebut statutory presumption makes conflict for jury to decide. Central Ry. Co., 131/167, 181, 62 S. E. 164.

Of plaintiff, how treated in determining whether nonsuit should be granted. Chandler, 113/132, 38 S. E. 305.

Of party, construed against him. Southern Ry. Co., 121/428, 49 S. E. 294; Bussey, 23 A. 709, 99 S. E. 236. Contradictory and inconsistent evidence of plaintiff as witness did not support recovery. Atlanta Ry. & Co., 119/835, 47 S. E. 213. Contradiction of one another, by witnesses or State, did not prevent verdict of conviction. Holland, 8 A. 470, 69 S. E. 591.

Credibility and opportunity for knowledge; rule as to positive and negative testimony not properly qualified in charge. Peak, 5 A. 56, 62 S. E. 665.

Admissibility of circumstances tending to show. Ga. So. Ry. Co., 5 A. 740, 63 S. E. 525.

As affected by reward. Union, 7 A. 27, 66 S. E. 24; McLendon, 7 A. 687,

67 S. E. 846; Gordon, 7 A. 692, 67 S. E. 893; Berry, 16 A. 479, 85 S. E. 683.

Charge of court as to, not misleading. Blanchard, 8 A. 420, 69 S. E. 313. A matter exclusively for jury, regardless of extent of impeaching or contradictory testimony. Chatman, 8 A. 842, 70 S. E. 188.

Comparative means of knowledge, as test, in weighing testimony of different persons; error in charge to jury. Lawrence, 10 A. 787, 74 S. E. 300; Richter, 13 A. 369, 79 S. E. 179.

Matters affecting; proof relevant that prosecutor was bail for witness for prosecution. Bates, 4 A. 491, 61 S. E. 888. Reputation for lewdness may be proved, to discredit female witness; but jury may believe her to be truthful, though not virtuous. Cripe, 4 A. 832, 62 S. E. 567.

Meaning of "personal credibility" in code section as to charging jury on. W. & A. R. Co., 6 A. 387, 65 S. E. 48.

For jury. Haywood, 114/111, 39 S. E. 948; Mathis, 114/112, 39 S. E. 893; Jackson, 114/861, 40 S. E. 989; Bush, 3 A. 44, 59 S. E. 459; Southern Ry. Co., 3 A. 548, 60 S. E. 297; Austin, 3 A. 780, 61 S. E. 998.

Affidavit in forma pauperis by appellant shown to be owner of valuable property, admitted. Leake, 5 A. 102, 62 S. E. 729.

To be determined by jury and trial judge, not court of review. Greer, 6 A. 785, 65 S. E. 802; Widener, 9 A. 302, 70 S. E. 1119; King, 9 A. 413, 71 S. E. 491; Gordon, 7 A. 692, 67 S. E. 893. Credibility, where in apparent conflict with physical laws, to be determined by jury. Parrott, 7 A. 711, 67 S. E. 1049.

Of detective. Ford, 13 A. 68, 78 S. E. 782.

Determined by jury. Prosecutrix in rape; and alibi. Canida, 130/15, 60 S. E. 104. Impeached witness, in murder. Reed, 130/53, 60 S. E. 191. Contest for reward. Hewitt, 130/709, 713, 61 S. E. 716, 14 Ann. Cas. 800.

Credibility—(Continued).

Of statement of accused is solely for the jury. *Richardson*, 3 A. 321, 59 S. E. 916.

Of uncontradicted testimony, question for jury. *Haverty Furniture Co.*, 15 A. 621, 84 S. E. 138. May be disregarded when. *Ford*, 13 A. 68, 78 S. E. 782; *Daniels*, 13 A. 66, 78 S. E. 777.

Rebuttal of testimony attacking. *Leake*, 5 A. 102, 62 S. E. 729.

When age, business, and the fact that one has wife and daughters are relevant on question as to. *Ga. So. Ry. Co.*, 5 A. 740, 68 S. E. 525.

Custom or habit authorizing inference of notice. *Vaughan*, 22 A. 401, 96 S. E. 13.

Damages, facts sufficient for reasonably accurate estimate of, by jury; as to loss of cotton by fire. *Moss*, 144/173, 86 S. E. 550.

From breach of warranty of title to land; evidence not showing measure of damages. *Croom*, 145/347, 89 S. E. 199.

From homicide, evidence insufficient to furnish basis for estimating. *James*, 115/313, 41 S. E. 585.

Day mentioned without year, treated as referring to year obviously intended. *Swift*, 8 A. 45, 70 S. E. 97.

Dedication implied, acts relied on to show must clearly indicate intent. *Mayor &c. of Savannah*, 140/353, 78 S. E. 906, 48 L. R. A. (N. S.) 469.

Of street, essentials of. Evidence insufficient to establish. *Ga. R. Co.*, 118/486, 45 S. E. 256.

Defense established by uncontradicted testimony of unimpeached witnesses must prevail. *W. & A. R. Co.*, 112/553, 37 S. E. 863.

Delivery constructive, sufficiency of evidence. *Lydia Pinkham Co.*, 108/138, 33 S. E. 945.

Of deed, evidence not sufficient to show. *Martin*, 141/201, 80 S. E. 629.

Of deed shown prima facie, subject to rebutting evidence. *Shelton*, 148/128, 96 S. E. 3; *Hall*, 148/816, 98 S. E. 549.

Of goods, evidence sufficient as to. *Dawson Paper Shell Pecan Co.*, 19 A. 793, 92 S. E. 302. Insufficient here. *Southern Ry. Co.*, 115/638, 42 S. E. 15.

Of mortgages and transfers of notes and accounts, question of fact. *Lydia Pinkham Co.*, 108/138, 33 S. E. 945.

Of pledge, sufficiently proved. *Henry*, 110/753, 86 S. E. 55, 78 Am. St. R. 137.

Description of money, indictment and proof sufficient as to. *McDonald*, 2 A. 633, 58 S. E. 1067.

Of property injured (heifer); one year's difference in age no material variance. *Seaboard Air-Line Ry.* 3 A. 644, 60 S. E. 353.

Desertion as ground for divorce, evidence insufficient to show. *Williams*, 145/800, 89 S. E. 836.

Detective's testimony, weight of. *Venable*, 8 A. 575, 70 S. E. 28; *Ford*, 13 A. 68 78 S. E. 782; *Berry*, 16 A. 479, 85 S. E. 683; *Smith*, 15 A. 713, 84 S. E. 159. Proper charge to jury on question as to credibility of. *Clark*, 5 A. 605, 63 S. E. 606.

Diligence, testimony of railroad employee as to, not contradicted, overcomes presumption of negligence and makes out defense. *S. C. & Ga. R. Co.*, 108/437, 33 S. E. 994.

Disclaimer of title, weight of, for jury. *Shingler*, 135/669, 70 S. E. 563.

Discretion of jury as to credit of parties, larger than as to credit of witnesses who are not parties. *Armstrong*, 118/171, 44 S. E. 996; *Farmer*, 118/289, 45 S. E. 244.

Disregarded arbitrarily, should not be, by jury. Prior decisions cited. *Central Ry. Co.*, 131/166, 176, 62 S. E. 164. Jury may not disregard testimony of unimpeached witnesses. *Dollar*, 124/522, 52 S. E. 615.

Division of land, evidence not conclusive as to. *Alfriend*, 124/565, 52 S. E. 925.

Draft discounted by bank; testimony not enough to make issue as to its deposit for collection only. *Merchants Bank*, 142/265, 82 S. E. 658.

Duress and fraud not shown by demand for payment for allowing walls joined and threatening to prevent it. *Leader*, 135/468, 69 S. E. 721.

Not shown by evidence of threats of prosecution, etc. *Mallory*, 135/702, 70 S. E. 586.

Of threatened criminal prosecution not shown. *Smith*, 148/837, 85 S. E. 1034. See *Jordan*, 143/143, 84 S. E. 549, L. R. A. 1915D, 1122; *Dorsey*, 143/187, 84 S. E. 467, Ann. Cas. 1917-A, 172.

Easement, abandonment of, not for witness's conclusion, but for jury's. Evidence to show forfeiture thereof must be decisive and unequivocal. *Gaston*, 120/516, 48 S. E. 188.

Ejectment, evidence insufficient to support action of. *Priester*, 135/694, 70 S. E. 646.

Employee's authority or official character, facts from which inferred. *Coursey*, 113/298, 38 S. E. 866. Employee's testimony not to be arbitrarily disregarded; former decision explained. *Haverty Furniture Co.*, 15 A. 620, 84 S. E. 138; *Brunswick R. Co.*, 113/842, 39 S. E. 551, 61 L. R. A. 13.

Enormity of offense, testimony showing, considered by jury in recommending as to punishment. *Hart*, 141/672, 81 S. E. 1108.

Enticing servant, evidence not sufficient to support conviction of. *Rucker*, 2 A. 140, 58 S. E. 295.

Equivocal testimony of party to case, construed against him; refusal so to charge jury, not harmful error here. *Charleston &c. Ry. Co.*, 13 A. 528, 538, 80 S. E. 1097.

Estoppel, what proof necessary to raise. *Mims*, 3 A. 247, 59 S. E. 711.

Eviction, acts amounting to. *Roberson*, 7 A. 142, 66 S. E. 542.

Filing, clerk's entry of, proper, but not necessary or conclusive evidence thereof. *Reeves*, 147/675, 95 S. E. 246.

Fire, evidence not sufficient to authorize inference that locomotive threw out. *Seaboard Air-Line Ry.*, 145/688, 89 S. E. 718.

Fornication, evidence warranting conviction of. *Base*, 103/227, 29 S. E. 966.

Fraud, domination, and undue influence shown by evidence of abuse with threats and violence. *Strickland*, 147/494, 94 S. E. 766.

In conveyance by debtor, evidence not sufficient to show. *Cowart*, 101/1, 29 S. E. 270.

As against creditors, in transfer of property to another; evidence insufficient to show. *Wilson*, 11 A. 348, 75 S. E. 334.

Evidence insufficient to show. *Sumner*, 121/1, 9, 48 S. E. 727.

Evidence meager and unsatisfactory as to discovery of, and as to prompt action to rescind. *Brown Bank*, 143/52, 84 S. E. 183.

In conveyance, not indicated by mere relationship of parties. *Hatcher*, 142/193, 82 S. E. 518.

Of shipper, not shown by his taking receipt on carrier's form, leaving valuation blank. *Southern Express Co.*, 134/445, 67 S. E. 494, 137 Am. St. R. 227.

Slight circumstances sufficient to authorize inference of, when. *Bryant*, 19 A. 82, 90 S. E. 1027; *Atlanta Skirt Mfg. Co.*, 8 A. 300, 68 S. E. 1077.

In representation of acreage of land sold; evidence insufficient to show actual shortage. *Powell*, 138/397, 75 S. E. 318.

Gift of land in parol, evidence of making, to satisfy beyond a reasonable doubt. *Adkins*, 147/136, 93 S. E. 92; *Williams*, 147/219, 93 S. E. 215.

By wife to husband not presumed; evidence of intent must be clear and free from doubt. Not shown by proof that deed was without consideration. *Frank*, 148/858, 98 S. E. 497.

In parol, testimony not sufficient as to; no boundaries given, etc. *Hall*, 136/537, 71 S. E. 901. Not shown by declaration of donee in possession. *Rucker*, 136/830, 72 S. E. 241.

Gun alleged, pistol proved, no variance. *Hill*, 147/650, 95 S. E. 213.

Habit, testimony not sufficient to prove. *W. & A. R. Co.*, 23 A. 225, 97 S. E. 878.

Heir or devisee, general references in testimony not sufficient proof that debtor was. *Webb*, 142/422, 83 S. E. 99.

Highway; testimony that road was "a public road used by the public," prima facie proof that it was public road or highway. *Chapman*, 7 A. 821, 68 S. E. 271.

Homicide; evidence raising theory of voluntary manslaughter. *Peterson*, 146/6, 90 S. E. 282; *Underwood*, 146/137, 90 S. E. 861.

Identity of accused; sufficiency of evidence. *Webb*, 133/585, 66 S. E. 784.

Allegation that "Anna Miller" was mother of bastard, held supported by proof that this was her maiden name and she was still known by it, although after marriage she was also known as "Anna Edwards." *Pittman*, 22 A. 256, 95 S. E. 940.

Evidence authorized jury to infer that "Mose" Giddens was "M. M." Giddens named in indictment. *Hall*, 22 A. 114, 95 S. E. 936.

Of person, evidence unsatisfactory as to, but sufficient to support verdict. *Lovett*, 9 A. 232, 70 S. E. 989.

Of pistol as belonging to him whom accused shot, and of place where found, for jury. *Worrill*, 116/853, 43 S. E. 247.

Of property, a question of fact for jury. *Monroe County*, 3 A. 584, 60 S. E. 293; *Cox*, 3 A. 609, 60 S. E. 283. Not affected by variance as to age. *Seaboard Air-Line Ry.*, 3 A. 644, 60 S. E. 353.

Sufficient evidence as to, in case of mule killed by train. *Williams*, 22 A. 386, 96 S. E. 13.

Sufficiency of testimony as to. *Banks*, 13 A. 182, 78 S. E. 1014.

Ignorance of witness, as affecting probative value of testimony. *Wilson*, 9 A. 287, 70 S. E. 1128.

Illegal sale, liquor bought for, not shown by suspicious circumstances. *Weichselbaum*, 127/417, 56 S. E. 413.

Impeaching, whether sufficient, a jury question. *Chatman*, 8 A. 842, 70 S. E. 188.

Implied promise to pay, proof establishing sufficient, to support allegation here. *A. C. L. R. Co.*, 21 A. 83, 94 S. E. 65.

Improbability, as reason for disregarding uncontradicted testimony. *Ford*, 13 A. 68, 78 S. E. 782. See *Daniels*, 13 A. 66, 78 S. E. 777. Improbable, not opposed to physical laws, verdict based on. *W. & A. R. Co.*, 23 A. 367, 98 S. E. 238.

Incredible, seemingly, when verdict may stand on. *Atlanta Ry. Co.*, 118/457, 458, 45 S. E. 494.

Indemnity contract, proof making prima facie case of liability on. *Atlantic Compress Co.*, 135/140, 68 S. E. 1028.

Inference, as basis for verdict; rule as to. *Smith*, 16 A. 105, 84 S. E. 734.

From absence of counter-evidence, rule as to, not apply as against plaintiff, where prima facie defense is not made out. *Southern Express Co.*, 126/472, 55 S. E. 254.

From failure to introduce witness. *Citizens National L. Ins. Co.*, 13 A. 30, 78 S. E. 683.

Negative, not supplying evidence of material fact. *Wood*, 145/260, 88 S. E. 980.

Of negligence, in case of explosion of bottle; doctrine of maxim res ipsa loquitur discussed. *Payne*, 10 A. 762, 73 S. E. 1087. Cases collected. *Sinkovitz*, 5 A. 788, 64 S. E. 93. See *Cochrell*, 5 A. 322, 63 S. E. 244. Whether doctrine of res ipsa loquitur applied, a jury question. *Stamps*, 8 A. 230, 232, 68 S. E. 947.

Reasonably deducible from facts proved, jury may draw. *L. & N. R. Co.*, 144/89, 86 S. E. 217.

Reasonable, not authorized by evidence raising conjecture or suspicion. *Carter*, 3 A. 222, 59 S. E. 603.

Ordinarily to be drawn by jury. *Taylor*, 135/622, 70 S. E. 237.

Resting on inference, not permissible. *Ga. Ry. Co.*, 1 A. 714, 57 S. E.

1076. A doctrine of doubtful soundness. *Lee*, 8 A. 413, 419, 69 S. E. 310.

Sufficiency of facts to warrant, question for jury. *Coleman*, 5 A. 768, 769, 64 S. E. 828.

To be drawn by jury, not witness; rule and exception. *Pride*, 133/440, 66 S. E. 259; *Auld*, 136/267, 71 S. E. 426, 37 L. R. A. (N. S.) 518.

Innkeeper and guest, evidence not sufficient to show relation of. *Brewer*, 132/563, 64 S. E. 674, 23 L. R. A. (N. S.) 1107, 131 Am. St. R. 216, 16 Ann. Cas. 936.

Insanity, evidence insufficient to show. *Battle*, 105/708, 32 S. E. 160; *Taylor*, 105/746, 31 S. E. 764; *Buchanan*, 103/92, 29 S. E. 608.

Of maker of deed, sufficiency of evidence as to. *Lunday*, 129/595, 59 S. E. 276.

Insolvency not shown by testimony of that one owns land, in other State, incumbered by liens greater in amount than its value. *Wright*, 116/194, 42 S. E. 369.

Notice of, shown by circumstances (receiving payment from bank out of usual course of business). *McGregor*, 128/585, 58 S. E. 28, 13 L. R. A. (N. S.) 185.

Sufficient evidence of, for submission of issue to jury. *Crawford*, 130/519, 61 S. E. 117.

Insufficiency of evidence to support action can be urged after verdict, though received without objection. *Brookman*, 148/726, 98 S. E. 543; cf. *Groover*, 148/794, 98 S. E. 503.

Insurance loss, sufficient evidence of waiver of policy stipulation by refusal to pay, and of agent's authority to waive. *Continental Ins. Co.*, 110/137, 35 S. E. 287.

Intent, evidence as to, insufficient here to sustain conviction of riot. *Dixon*, 105/787, 31 S. E. 750.

To steal, evidence insufficient as to, of intoxicated man. *Coleman*, 122/136, 50 S. E. 56. To murder, how arrived at. *Ham*, 122/574, 50 S. E. 342.

Circumstances authorizing inference as to intent to kill. *Lovett*, 9 A. 232, 70 S. E. 989.

Journals legislative, sufficiency of. *Carswell*, 133/714, 66 S. E. 905.

Judgment against administrator in suit by distributee of estate is prima facie evidence of assets in hand. *Byrd*, 101/46, 28 S. E. 674.

Juror's disqualification by prejudice, when not shown by one witness alone. *Sumner*, 109/142, 34 S. E. 293.

Impartiality attacked after verdict, weight and credibility of affidavits thereon, for judge. *Hackett*, 108/40, 33 S. E. 842.

Incompetency, evidence on issue as to, for judge as trier. *Perdue*, 135/279, 69 S. E. 184.

Misconduct presumed injurious to accused. Purgation, evidence insufficient for. *Smith*, 122/154, 50 S. E. 62.

Knowledge, absence of, not proved by mere testimony of one witness that he did not communicate what he heard. *Scott*, 132/359, 64 S. E. 272.

How inferred by jury. *Birdsong*, 120/850, 48 S. E. 329.

Inference of, from reputation. *Basil*, 22 A. 765, 97 S. E. 259.

Land wild and uncultivated, evidence not conclusive that either parcel was. *Downing*, 136/665, 72 S. E. 22.

Landlord's parting with title during tenancy, evidence was insufficient to show. *Goosby*, 141/609, 81 S. E. 855.

Larceny, evidence not sufficient to convict of. *Mitchell*, 103/17, 29 S. E. 435.

Simple, evidence not warrant conviction, where no proof of value of stolen property. *Benjamin*, 105/830, 31 S. E. 739.

Letters, evidence insufficient to show that a certain person wrote them. *Campbell*, 123/533, 51 S. E. 644.

Liquor, possession of, for purpose of illegal sale; sufficiency of proof. *Sawyer*, 2 A. 159, 58 S. E. 399.

Malicious prosecution, evidence of, insufficient. *Shell*, 103/248, 29 S. E. 924.

Marriage not shown by testimony that one "claims to be a married man." *Tison*, 125/7, 53 S. E. 809.

Not shown by reputation, cohabitation, and defendant's statement made a year before the alleged adultery for which she was on trial. *Craft*, 13 A. 79, 78 S. E. 776.

Proposal and acceptance, circumstances sufficient to show. *Graves*, 123/229, 51 S. E. 318.

Proof of, by witness testifying to marriage in fact, without evidence as to authority of person officiating, or of compliance with statutory requirements. *Cunningham*, 13 A. 80, 78 S. E. 780.

Sufficient proof of. *Grand Lodge*, 9 A. 71, 70 S. E. 678. Proof of, by repute. *Miller*, 9 A. 827, 72 S. E. 279. **Mental capacity** of testatrix and of attesting witness; sufficiency of evidence. *McFarland*, 144/63, 86 S. E. 227.

Mental incapacity, sufficiency of evidence as to. *Lunday*, 129/595, 59 S. E. 276.

To contract, testimony as to, raised issue for decision by jury. *Hartley*, 138/736, 76 S. E. 39.

To make voluntary deed, not shown here. *Richardson*, 110/426, 35 S. E. 648.

Mistake, quantum and character of evidence necessary to show, in proceeding to reform instrument; instruction to jury, considered. *Nelson*, 129/36, 58 S. E. 697; *Newberry*, 146/679, 92 S. E. 67.

Money, allegation of procuring, supported by proof of receiving and cashing draft. *McCoy*, 124/220, 52 S. E. 434.

Motive, evidence insufficient as to, in arson case. *Matthews*, 10 A. 302, 73 S. E. 404.

Name, immaterial variance as to ("Chas." and "Charlie"). *Ga. Life Ins. Co.*, 12 A. 862, 78 S. E. 1115.

In evidence ("Son" Field), not treated as referring to defendant (Henry Field). *Field*, 126/573, 55 S. E. 502.

No material variance between "Maria," and "Marie." *Watkins*, 18 A. 500, 89 S. E. 624.

Where indictment gives alias; proof that accused was commonly known by either, sufficient. *Jenkins*, 4 A. 859, 62 S. E. 574.

Negative, sufficient to make issue of fact as against positive testimony. *W. & A. R. Co.*, 23 A. 367, 98 S. E. 238.

Negligence, failure to prove alleged acts of, cause for setting aside verdict. *Southern Tr. Co.*, 118/672, 45 S. E. 458.

In operating locomotive engine, sufficient evidence to raise issue of. *Ga. &c. Ry. Co.*, 133/13, 65 S. E. 381.

Of livery-stableman not shown. *Wood*, 143/495, 85 S. E. 694.

New promise to remove bar of limitation, letters here insufficient as. *Kelly*, 116/875, 43 S. E. 280.

Nonsuit, function of motion for. *Hicks*, 131/93, 62 S. E. 45.

Not granted on evidence of defendant. Error in refusing, may be cured by evidence supplied by either party. *Alabama Construction Co.*, 131/369, 62 S. E. 160.

Prevented by evidence making prima facie case. *Alabama Construction Co.*, 131/365, 62 S. E. 160.

Reversed for error in rejecting essential evidence. *Ga. Iron Co.*, 133/326, 65 S. E. 775.

Notice, evidence not sufficient to prove. *Bank*, 133/779, 67 S. E. 83.

Facts not sufficient to put purchaser of negotiable note on inquiry. *Linderman*, 143/366, 85 S. E. 101.

Facts sufficient to put on inquiry as to fraud. *Empire Insurance Co.*, 140/142, 78 S. E. 935.

Facts sufficient to put purchaser on notice of third person's title. *Flood*, 18 A. 319, 89 S. E. 373.

Insufficient proof of posting, at public places. *O'Neill*, 127/640, 56 S. E. 739.

Insufficient testimony of general reputation in community. *Heatley*, 135/154, 68 S. E. 783.

Of fraud or want of consideration of negotiable note, evidence not sufficient to show. *Heard*, 143/48, 84 S. E. 129.

Of fraudulent representations to stockholders, not shown by third person's knowledge that promoters charged company more than they paid for land. *Cranston*, 112/617, 37 S. E. 875.

To bank, of invalidity of note, sufficiency of evidence as to. *Hager*, 105/116, 31 S. E. 141.

To indorsee of negotiable note before maturity; circumstances sufficient to put on inquiry. *Fidelity Co.*, 142/821, 83 S. E. 961.

To transferee, evidence not sufficient to charge, that wife was paying debt of husband. *Hall*, 138/734, 75 S. E. 1132.

Opinion of judge on evidence, error to express or intimate. *Turner*, 118/756, 45 S. E. 598; *Stephens*, 118/762, 45 S. E. 619; *Oliveros*, 118/776, 45 S. E. 596; *Sharpton*, 1 A. 542, 57 S. E. 929; *Ga. Ry. Co.*, 1 A. 832, 58 S. E. 88. See *Southern Ry. Co.*, 1 A. 736, 58 S. E. 244; *Ga. Ry. Co.*, 1 A. 836, 58 S. E. 88; *Clark*, 126/79, 54 S. E. 808; *Hayes*, 143/183, 184, 84 S. E. 442; *North Ga. Mill. Co.*, 130/113, 60 S. E. 258, 24 L. R. A. (N. S.) 235; *Hudson*, 104/132, 30 S. E. 688; *Atl. R. Co.*, 127/806, 56 S. E. 1006, 9 L. R. A. (N. S.) 769, 9 Ann. Cas. 553.

Error in expressing, when ruling on objection to testimony. *Moss*, 147/311, 93 S. E. 875.

Expressed by saying, after interrogating witness, "That is sufficient." *Hubbard*, 108/786, 33 S. E. 814. Compare *Varnier*, 108/813, 34 S. E. 166.

Expression or intimation of, no error where matter was undisputed. *Fitzgerald Co.*, 3 A. 217, 59 S. E. 713. No intimation here. *Donaldson*, 3 A. 452, 60 S. E. 115. No error, where evidence shows admission. *Cooley*, 3 A. 497, 60 S. E. 220.

Not expressed by judge's remark on material fact in ruling as to nonsuit. *Morris*, 145/562, 89 S. E. 704.

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When not shown by question indicative of surprise at position assumed by counsel. *Herrington*, 130/307, 60 S. E. 572.

Exception to intimation of, not embraced by assignment that finding is contrary to law. *Smith*, 3 A. 509, 60 S. E. 274.

Not intimated by remark of judge, that solicitor states he wishes to show motive. *Burley*, 130/343, 60 S. E. 1006. By remark of judge as to competency. *Summerlin*, 130/794, 61 S. E. 849.

Not expressed by judge stating answer given by witness to question. Immaterial inaccuracy in such statement, harmless. *Herrington*, 130/307, 60 S. E. 572.

Expressed or intimated by stating what a witness has testified. *Suddeth*, 112/407, 37 S. E. 747.

Remark did not amount to. *Prescott*, 133/405, 65 S. E. 877.

Not to be expressed or intimated before or during charge to jury. Proper practice indicated. *Fla. Central R. Co.*, 110/121, 35 S. E. 283; *Continental Ins. Co.*, 110/130, 35 S. E. 287; *Tiget*, 110/245, 34 S. E. 1023; *Smith*, 110/255, 34 S. E. 204.

Not expressed or intimated by construing written contract and charging jury the legal effect of it. *Shaw*, 133/446, 66 S. E. 240.

Intimated by complimenting witness. *Alexander*, 114/268, 40 S. E. 231. By telling jury to give weight. *Moody*, 114/449, 40 S. E. 242. In colloquy with counsel. *Ficken*, 114/970, 41 S. E. 58.

Expressed or intimated, requires new trial. *Nelson*, 124/8, 52 S. E. 20; *Singleton*, 124/139, 52 S. E. 156. Not so as to expression after verdict received. *Battise*, 124/866, 53 S. E. 678.

As to probative value of evidence, when not intimated by words in ruling it in. *Hoxie*, 114/20, 39 S. E. 944. Opinion not intimated, in charge, as to who did shooting. *Moore*, 114/256, 40 S. E. 295.

Opinion—(Continued).

Harmless expression or intimation of. **Wadley Lumber Co.**, 130/136, 60 S. E. 836; **Jones**, 130/274, 60 S. E. 840.

Not expressed or intimated by remark, admitting "for what it is worth." **Young**, 131/498, 62 S. E. 707.

Not expressed or intimated by remarks in ruling on oral request to charge, or on motion to dismiss. **Campbell**, 124/432, 52 S. E. 914; **Central R. Co.**, 124/836, 53 S. E. 391.

Not expressed or intimated by court as to weight and effect of. **Solomon**, 2 A. 94, 58 S. E. 381; **Lee**, 2 A. 484, 58 S. E. 676; **City of Cedartown**, 2 A. 589, 59 S. E. 836. Judge did not express. **Addis**, 120/180, 47 S. E. 505; **McArthur**, 120/195, 47 S. E. 553; **Owens**, 120/210, 47 S. E. 545.

Not expressed by court's statement touching counsel's argument here. **Cason**, 148/477, 97 S. E. 74.

Not expressed by judge's question and remark to witness. **Simmons**, 138/137, 74 S. E. 1000.

Intimation of, by judge's charge to jury or questions to witness, error for reversal. **Rouse**, 2 A. 184, 58 S. E. 416; **Dicks**, 2 A. 192, 58 S. E. 335; **Dorsey**, 2 A. 228, 58 S. E. 477; **Butler**, 2 A. 397, 58 S. E. 685; **Durham**, 2 A. 401, 58 S. E. 555; **Johnson**, 2 A. 405, 58 S. E. 684; **Lunsford**, 2 A. 492, 58 S. E. 689; **Taylor**, 2 A. 723, 59 S. E. 12; **Ford**, 2 A. 834, 59 S. E. 88. No error, on trial by judge without a jury. **Sutton**, 2 A. 417, 58 S. E. 544.

Intimated by form of questions put to witness. **City of Columbus**, 120/786, 58 S. E. 318.

Intimated by court in repelling testimony. **Holt**, 2 A. 384, 58 S. E. 511.

Giving reason for admitting evidence, no expression of what had been proved. **Oliveros**, 120/242, 47 S. E. 627, 1 Ann. Cas. 114. No opinion expressed by saying there is no dispute, when in fact no conflict in evidence. **Greer**, 120/290, 47 S. E. 930.

Expressed by judge on weight of, no reason for declaring mistrial.

Oliveros, 120/237, 47 S. E. 627, 1 Ann. Cas. 114.

Oral contract alleged, not supported by proof of written one. **So. Cotton Oil Co.**, 23 A. 413, 98 S. E. 411.

Overflow of land from obstruction placed in stream; evidence supported allegation. **Southern Ry. Co.**, 131/21, 61 S. E. 913.

Ownership, allegation as to, in indictment for arson, supported by proof of occupancy under claim of right. **Harrell**, 121/607, 49 S. E. 703.

Allegation that four persons owned, not supported by proof that one of them claimed an easement. **Grant**, 120/199, 47 S. E. 524. Sufficient, that cotton was raised by the family and that the husband had possession, sold it, and received the proceeds. **Johnson**, 120/509, 48 S. E. 199.

Insufficient proof of, as alleged **Riley**, 1 A. 651, 57 S. E. 1031.

Inferred from circumstances. **Barnum & Bailey Shows**, 17 A. 85, 86 S. E. 96.

Inferred from possession. **Holder**, 127/51, 52, 56 S. E. 71.

Insufficient proof of, in trespass. **Moore**, 126/42, 54 S. E. 814.

Laid in husband, not negated by unperformed promise of gift to wife. **Andrews**, 106/393, 32 S. E. 341.

Not proved as alleged, where alleged to be in A and proved to be in A and B. **Williams**, 13 A. 341, 79 S. E. 207.

Of land, and effort to defraud creditors, evidence made out prima facie case of. **Webb**, 142/422, 423, 83 S. E. 99.

Of land not here shown by testimony in connection with agreement to convey title. **Dumas**, 130/737, 61 S. E. 710.

Of sample article, possession by salesman does not tend to mislead as to. **Harris Co.**, 110/302, 34 S. E. 1003.

Want of, not shown by testimony that witness "found out," and that accused told him he "did not have" the property. **Lee**, 120/194, 195, 47 S. E. 545.

When sufficiently shown by proof of possession, in burglary or larceny case *Hall*, 7 A. 115, 66 S. E. 390.

Partnership liability not shown by account kept by partner as agent for person suing. *Smith*, 101/137, 28 S. E. 653. Sale to partnership not shown by sale jointly to it and another person not a member of it. *Glausier*, 132/549, 64 S. E. 547.

Party not entitled to recover on his own testimony, if most unfavorable version of it calls for verdict against him. *Southern Banking Co.*, 108/796, 33 S. E. 974; *Southern Ry. Co.*, 121/428, 49 S. E. 294; *Steele*, 123/237, 51 S. E. 438.

Payments to wife; evidence raising suspicion that money went to pay husband's debts, when not sufficient to authorize verdict. *Bond*, 133/161, 165, 65 S. E. 376, 134 Am. St. R. 199. Evidence insufficient to show payment of note. *Bank of University*, 101/104, 28 S. E. 168.

Penalty, evidence of contract as basis to recover; what essential. *Polk*, 130/542, 61 S. E. 123.

Perjury, "corroborating circumstances," sufficiency of. *Sikes*, 105/594, 31 S. E. 567. Conviction of, sustained by testimony of one witness and corroborating circumstances of what strength. *Nance*, 126/95, 54 S. E. 932. Perjurer's testimony sufficient to prove subornation of perjury; the perjury may be shown by one witness and corroborating circumstances; corroboration sufficient here. *Bell*, 5 A. 701, 63 S. E. 860.

Physical facts of more evidentiary value than opinions of non-experts, as to speed of car. *McEwen*, 120/1003, 48 S. E. 391.

Proof of, may outweigh positive testimony. *Atlantic R. Co.*, 3 A. 508, 60 S. E. 277.

Physical laws, conflict of evidence with. *Parrott*, 7 A. 711, 67 S. E. 1049.

Positive and negative testimony, proper charge as to relative weight of. *Saunders*, 15 A. 344, 83 S. E. 148;

Wood, 9 A. 365, 71 S. E. 500. See *Nelms*, 123/576, 51 S. E. 588; *Southern Ry. Co.*, 119/148, 45 S. E. 1000.

Code section as to. *Patterson*, 134/264, 67 S. E. 816. P. C. § 1101 should not be given in charge except in a clear case. *Clay*, 4 A. 143, 60 S. E. 1028. Distinction between, not applicable to testimony here. *Hunter*, 4 A. 761, 62 S. E. 466; *Daniel*, 4 A. 843, 62 S. E. 539.

Credibility of witnesses material in considering. *Atl. R. Co.*, 127/685, 56 S. E. 986; *Helms*, 136/799, 72 S. E. 246; *Central Ry. Co.*, 3 A. 142, 59 S. E. 323; *Benton*, 3 A. 454, 60 S. E. 116. Error in charge as to, in omitting qualification as to credibility. *Central Ry. Co.*, 128/76, 57 S. E. 89.

Erroneous charge as to, not reversible error, the supposed negative testimony being positive. *Atlanta R. Co.*, 108/548, 34 S. E. 332.

Error in charging jury as to. *Peak*, 5 A. 56, 62 S. E. 665.

Failure to charge as to, no error, in absence of request. *Scott*, 117/14, 43 S. E. 425.

How considered. *Ga. Ry. &c. Co.*, 141/363, 80 S. E. 993; *Ware*, 141/410, 81 S. E. 118.

Refusal to charge jury as to, not error here. *Goldberg*, 22 A. 122, 95 S. E. 541.

Relative credibility of. *Lyens*, 133/588, 66 S. E. 792.

Relative probative force of. Rule not applied when positive testimony met by proof of alibi and impeaching testimony. *Atkinson*, 112/411, 37 S. E. 747.

Rule as to. *Hollis*, 103/76, 29 S. E. 482. Rule not applied where one witness says a thing occurred, and another with equal facilities for knowing says it did not. *Skinner*, 108/747, 32 S. E. 844; *Benton*, 3 A. 453, 60 S. E. 116.

Rule as to, refers to equal credibility. *Cowart*, 120/510, 48 S. E. 198.

Qualification of rule as to. *Atlanta Con. St. Ry. Co.*, 105/498, 30 S. E.

Positive and negative—(Continued).

934; *Southern Ry. Co.*, 115/659, 42 S. E. 42; *Kimbrough*, 101/583, 29 S. E. 39. Qualified by consideration of credibility. *Whitfield*, 2 A. 124, 58 S. E. 385; *Mill*, 2 A. 398, 58 S. E. 673; *Selman*, 2 A. 770, 59 S. E. 85; *Georgia R. Co.*, 144/22, 85 S. E. 1006. Qualified; and when not applicable to all. *Wood*, 1 A. 684, 58 S. E. 271; *Phillips*, 1 A. 687, 57 S. E. 1079.

Statement of witness that she did nothing that she knew of to produce the result, admissible. *City of Cedar-town*, 2 A. 589, 59 S. E. 836.

Distinguished. *Heywood*, 12 A. 643, 77 S. E. 1130. Positive, of expert, who surveyed boundaries, outweighs opinion of non-expert, inconsistent with physical facts. *Lanier*, 110/268, 34 S. E. 306. Positive preferred, when all can be harmonized without imputing untruth of negative. *Jacobs*, 1 A. 519, 57 S. E. 1063.

Possession as basis of prescriptive title; sufficiency of evidence as to good faith. *Teel*, 142/245, 82 S. E. 662.

Evidence of, ambiguous or doubtful, issue is for jury. *Martin*, 134/477, 68 S. E. 69; *Taylor*, 134/478, 68 S. E. 70.

Fact of, not conclusive of right in which it was held. *Alfriend*, 124/566, 52 S. E. 925.

Of animal, sufficiency of evidence as to. *Patrick*, 10 A. 285, 73 S. E. 559.

Of goods by accused, like those delivered to him on forged order, when insufficient to authorize conviction. *McCombs*, 109/496, 34 S. E. 1021.

Of land, how evidenced. Occupancy for timber and turpentine operations, issue of fact on. *Walker*, 139/520, 77 S. E. 580.

Adverse, as basis of prescriptive title, evidence held not sufficient to show. *Gordon*, 147/55, 92 S. E. 892.

Insufficient evidence of: clearing of small part, placing of building timber, and posting of notices net to trespass. *Lambert*, 139/734, 78 S. E. 113.

Of unidentified part of land, no support for action of ejectment. *Whitehead*, 127/774, 56 S. E. 1004.

Partly by tenants, one being alleged donor and father of donee, when sufficient. *Holloway*, 140/381, 78 S. E. 928.

Prima facie evidence of title. *Southern Ry. Co.*, 121/386, 49 S. E. 285.

Prior, deed no reply to proof of, if based on immoral or illegal consideration. *Watkins*, 118/375, 45 S. E. 260.

When not shown by erection of house, etc. *Downing*, 126/375, 55 S. E. 184.

Preliminary proof, sufficiency or insufficiency of, how shown to reviewing court. *Miliken*, 8 A. 479, 69 S. E. 915; *Foreman*, 8 A. 822, 70 S. E. 158; *Fraternal Relief Assn.*, 9 A. 53, 54, 70 S. E. 265; *Southern Ry. Co.*, 9 A. 310, 71 S. E. 696; *Ætna Ins. Co.*, 9 A. 759, 72 S. E. 300; *Arnold*, 4 A. 56, 60 S. E. 815.

Preponderance and weight of, rule as to. *Shingler*, 135/666, 70 S. E. 563.

Against verdict, not authorize reversal by court of review. *Augusta-Aiken Ry. Corp.*, 12 A. 164, 76 S. E. 1044.

Burden of proving injury by. *Ga. &c. Ry. Co.*, 133/135, 65 S. E. 381. Charge to jury as to. *Ib.*; *Brandon*, 133/480, 66 S. E. 247; *Mayor &c. of Macon*, 14 A. 704, 82 S. E. 162; *Quiggle*, 125/98, 54 S. E. 74.

Charge of court as to, in proceeding to reform instrument, considered. *Nelson*, 129/36, 58 S. E. 697.

Correctly defined. *Scott*, 127/88, 56 S. E. 130; *Supreme Conclave*, 120/329, 47 S. E. 940.

Defense in murder not required to be made out by. *Boyd*, 136/431, 71 S. E. 416.

Meaning of. *Dixon*, 18 A. 123, 88 S. E. 912. Does not depend on number of witnesses. *Ib.*

Harmless error in charge as to. *Home Savings Bank*, 19 A. 360, 91 S. E. 494.

Intelligence of witnesses as affecting; charge of court as to, not shown to be harmful here. *Bank of Wrightsville*, 119/288, 46 S. E. 94.

Rule of, in civil case where plaintiff relies only on circumstantial evidence. *Central of Ga. Ry. Co.*, 23 A. 26, 97 S. E. 461.

Reviewing court without power to determine as to. *Eckman*, 23 A. 393, 98 S. E. 187.

No error in not explaining meaning of, to jury. *Seaboard Air-Line Ry.*, 136/505, 71 S. E. 887.

Error in charge of court as to, immaterial here. *City of Sparta*, 15 A. 656, 84 S. E. 151.

Sufficient to produce mental conviction in civil cases. *Brothers*, 140/617, 79 S. E. 468.

When defense must be supported by. *Atlantic R. Co.*, 132/190, 63 S. E. 834; *Pusser*, 132/280, 288, 64 S. E. 75, 22 L. R. A. (N. S.) 571.

Rule of, when not applicable. *Robertson*, 148/81, 95 S. E. 973.

Not matter for charge to jury in criminal case. *Mill*, 2 A. 398, 58 S. E. 673. Cured by subsequent instruction. *McLeod*, 128/17, 57 S. E. 83. Not proper in criminal case, but did not require reversal here. *Jackson*, 125/102, 53 S. E. 607; *Williams*, 125/302, 54 S. E. 108.

Civil-code section ordinarily inapt on issue of guilt of crime. *Gale*, 135/351, 69 S. E. 537.

Not applied in criminal case. What charge as to mental conviction not error. *Holmes*, 131/806, 63 S. E. 347.

Not ordinarily apt to be referred to, on issue of guilt or innocence of crime. *Pressley*, 132/65, 63 S. E. 784.

Prescriptive title by adverse possession under color, sufficient evidence of. *Bowman*, 133/49, 65 S. E. 156. Evidence not sufficient. *Weeks*, 133/473, 66 S. E. 168, 134 Am. St. R. 213; *Smith*, 113/790, 66 S. E. 1086; *Frazier*, 147/654, 95 S. E. 211; *Coursey*, 141/66, 80 S. E. 462.

Evidence showing; and insufficient evidence of adverse claim. *Roberson*, 126/175, 54 S. E. 1020.

On twenty years possession, evidence raised issue as to. *Stringfield*, 143/557, 559, 85 S. E. 754.

Presence and participation in general transaction in which homicide occurs, not conclusive of consent thereto. *Futch*, 137/75, 72 S. E. 911.

Private way, evidence showed no right to. *Rodgers*, 141/560, 81 S. E. 873.

Probable cause for prosecution, committal by magistrate is prima facie evidence of, not conclusive. *Luke*, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559; *Lindsay*, 6 A. 284, 64 S. E. 1005.

For prosecution or civil suit, conclusive evidence of, by verdict of conviction or restraining order, though same set aside. *Hartshorn*, 104/235, 30 S. E. 666; *Short*, 104/628, 30 S. E. 810.

For suing out and prosecuting distress warrant, judgment for plaintiff therein, though reversed, is conclusive of. *Ga. Loan Co.*, 116/628, 43 S. E. 27.

Probata must correspond with allegata. *Faircloth*, 125/231, 53 S. E. 592.

See 1, ante, pp. 1552-1554.

Proof defined as to the effect of, and technically different from evidence. *Oliveros*, 120/242, 47 S. E. 627, 1 Ann. Cas. 114.

Rape, sufficiency of evidence to show. *Davis*, 144/54, 85 S. E. 1005.

Rates for public service, evidence insufficient to overcome presumption in favor of order as to. *Union Dry Goods Co.*, 145/658, 89 S. E. 779.

Ratification after notice, by assisting in facilitating sale, expressing satisfaction, etc. *McKinnon*, 118/462, 45 S. E. 413.

By silence. *Brooke*, 19 A. 21, 90 S. E. 1037.

Evidence of; presumed from slight circumstances. *Noble*, 124/961, 964, 53 S. E. 463.

Facts authorizing inference of. *Citizens Bank*, 15 A. 772, 84 S. E. 157.

Of delivery of property by acceptance of stock, testimony did not authorize finding of. **Howard**, 139/461, 77 S. E. 572.

Of land sale by husband, not shown by wife's admission that she knew of and was willing thereto, provided, etc. **Cooper**, 108/553, 34 S. E. 145.

Of some of unauthorized acts of partners, not proof of ratification of others. **Cody**, 103/790, 30 S. E. 281.

Of tort, not shown by promise to "do the right thing," etc. **Dougherty**, 21 A. 427, 430, 94 S. E. 636.

Reasonable doubt, and reasonable and moral certainty, considered. **Bone**, 102/387, 30 S. E. 845.

Alibi in connection with other evidence may raise. **Bone**, 102/387, 30 S. E. 845; **Shaw**, 102/660, 29 S. E. 477.

Need of proof beyond, in what civil cases. **Adkins**, 147/136, 93 S. E. 92; **Williams**, 147/219, 93 S. E. 215.

Definition of. **Jordan**, 130/406, 60 S. E. 1063.

Reasonableness of evidence to be determined by jury. **Parrott**, 7 A. 711, 67 S. E. 1049.

Reasonable time for cutting timber from land, a question of fact; how decided. **Hilton & Dodge Lumber Co.**, 141/654, 81 S. E. 1119; **Atlanta Compress Co.**, 118/868, 45 S. E. 677.

Rebuttal of prima facie presumption by positive, unequivocal, and uncontradicted testimony of unimpeached witness; such testimony can not be arbitrarily disregarded. **A. C. L. R. Co.**, 21 A. 81, 86, 94 S. E. 65.

Riot, evidence here insufficient to sustain conviction of, as to element of intent. **Dixon**, 105/787, 31 S. E. 750.

Sale of land in parol, degree of proof required to establish. **Warren**, 123/243, 51 S. E. 302.

Self-contradictory testimony of party to case, construed most strongly against him. **City of Thomasville**, 22 A. 384, 96 S. E. 335; **So. Cotton Oil Co.**, 23 A. 478, 98 S. E. 408.

Services of physician, evidence sufficient to support recovery for. **Pound**, 22 A. 502, 96 S. E. 333.

Set-off, plea of, not supported by evidence that a named person, "manager for plaintiff," was indebted to defendant. **Douglas Co.**, 127/571, 56 S. E. 635.

Sex of murdered child, failure to prove, as laid in indictment, is cause for new trial. **Holden**, 144/338, 87 S. E. 27.

Sexual intercourse, when not shown by proof as to sleeping in same room. **Lightner**, 126/563, 55 S. E. 471.

Specific performance of contract in parol to sell land, or to devise estate, strength of evidence to establish. **Gordon**, 148/394, 96 S. E. 1006; **Lloyd**, 148/575, 97 S. E. 523; **Landrum**, 148/774, 98 S. E. 477; **Adkins**, 147/136, 93 S. E. 92; **Williams**, 147/219, 93 S. E. 215. What allegations and proof necessary. **Harper**, 110/423, 35 S. E. 667.

Suspicion, testimony raising, may be insufficient to convict. **Erwin**, 120/150, 47 S. E. 512.

Tax receipts, as bearing on issue of adverse possession, must be aided by other evidence. **Causey**, 143/8, 84 S. E. 58.

Tender, or excuse for failure to tender, evidence insufficient to raise issue as to. **Probasco**, 144/417, 87 S. E. 466. Tender, or waiver thereof, evidence was not sufficient to show. **Smith**, 140/719, 720, 79 S. E. 775.

Threats, insufficiency of evidence as to. **Chapman**, 109/157, 34 S. E. 369.

Time for performance of statutory duty, evidence that did not show impossibility to perform within. **Central Ry. Co.**, 116/863, 43 S. E. 265, 60 L. R. A. 817.

Of offense, not shown by proof of day and month, without year. **Givens**, 105/843, 32 S. E. 341.

Of offense proved; month and day given, omitting year. **Fountain**, 2 A. 717, 58 S. E. 1129. See **Criminal Law**.

Of payment of draft, evidence not sufficient on issue as to. Dissent: jury could infer from circumstances. **Pee Dee Co.**, 144/176, 86 S. E. 551.

Title or interest in land sought to be subjected, not shown by vague and indefinite testimony. **Webb**, 142/422, 83 S. E. 99.

Facts constituting perfect equity effectual to transmit. **Lee**, 138/646, 75 S. E. 1051.

Evidence made no case of tenancy or permissive holding. **Darsey**, 138/584, 75 S. E. 667.

What evidence constituted, for jury. **Barnes**, 136/164, 71 S. E. 129.

Traversal of return of service, evidence not sufficient to support. **Evans**, 101/86, 28 S. E. 617.

Of answer of county-court judge, sustained by testimony of one witness, that his testimony as given on the trial is correctly stated in petition for certiorari, save in two minor particulars. **Daniels**, 118/18, 44 S. E. 818.

Trust express, evidence did not show. **Wheeler**, 139/604, 77 S. E. 875.

Uncertain testimony of a party construed against him. **Bussey**, 23 A. 709, 99 S. E. 236.

Uncontradicted testimony, jury not required to believe, when; former decisions discussed. **Haverty Furniture Co.**, 15 A. 620, 621, 84 S. E. 138.

Undue influence, evidence insufficient to show. **Penn**, 144/67, 86 S. E. 233; **Hixon**, 144/408, 87 S. E. 475.

Usage, proof of, insufficient here. **Ga. & Fla. Ry.**, 111/6, 36 S. E. 312.

Usury, evidence on contention that transfer was void for infection of, did not demand verdict. **Bank**, 138/799, 76 S. E. 95.

Sufficiency of evidence to support plea of: (1) to invalidate deed tainted with; (2) to recover money paid as. **Equitable Mortgage Co.**, 116/679, 43 S. E. 49.

Vagrancy, facts insufficient to show. **Gainer**, 2 A. 126, 58 S. E. 295.

Value not shown by proof of price paid, without more. **Southern Ry. Co.**, 128/819, 58 S. E. 470; **Elbert County**, 16 A. 835, 86 S. E. 651; **Allen**, 113/107, 38 S. E. 322. But proof of price paid is admissible as a circumstance, to be considered with other evidence, in determining value. **Southern Ry. Co.**, 113/335, 38 S. E. 744.

Evidence not sufficient to show, no basis for recovery. **Pickert**, 19 A. 488, 91 S. E. 908.

Of agricultural products, destroyed, sufficiently shown by testimony that account sued on is correct. **Chapman**, 1 A. 212, 58 S. E. 137.

Of fruit trees, sufficient evidence as to. **Tallulah Falls Ry Co.**, 20 A. 356, 93 S. E. 161.

Of note, amount on face is prima facie evidence of; not conclusive. **Citizens Bank**, 132/771, 65 S. E. 81; **Birmingham Fertilizer Co.**, 10 A. 699, 73 S. E. 1090.

Of property fraudulently sold, proved by owner's testimony that he had been injured in a stated sum by the sale. **Richter**, 4 A. 274, 61 S. E. 147.

Of property, not established by amount shown on broker's list and advertisement. **Peagler**, 143/11, 84 S. E. 59, Ann. Cas. 1917A, 232.

Stated in affidavit for bail, in trover, sufficient basis for amount of judgment against plaintiff. **Kaufman**, 10 A. 250, 73 S. E. 592.

Shown prima facie by agreement of parties as to price, when. **Moore**, 17 A. 670, 87 S. E. 1097.

Sufficiency of evidence as to. **Morris Storage Co.**, 1 A. 752, 58 S. E. 232; **Downer**, 10 A. 827, 74 S. E. 301; **Ayers**, 3 A. 307, 59 S. E. 924.

Sufficiently shown by cost and condition of mule, and other circumstances. **A., B. & A. R. Co.**, 7 A. 566, 67 S. E. 678. Sufficiency of evidence as to worthlessness to purchaser. **Washington Post Co.**, 7 A. 776, 68 S. E. 337.

Variance between allegations and proof. **Tillman**, 116/253, 42 S. E. 517; **W. & A. R. Co.**, 116/441, 444, 42 S. E. 737; **W. & A. R. Co.**, 116/448, 42 S. E. 785; **Kelly**, 116/873, 43 S. E. 280; **Leeman**, 116/911, 43 S. E. 260. "Fawn-colored Jersey heifer about eighteen months old," and "fawn colored heifer." **Hardy**, 112/18, 37 S. E. 95. Manner of deceit and of obtaining credit. **Carey**, 112/226, 228, 37 S. E. 405; **Reagan**, 112/372, 37 S. E. 380.

Variance—(Continued).

As to amount of money alleged to have been stolen. *Finkelstein*, 105/624, 31 S. E. 589.

As to date, when immaterial. *Ashburn*, 8 A. 568, 70 S. E. 19.

As to description of watch stolen, when not fatal. *Patterson*, 122/587, 50 S. E. 489.

As to name of person; none where proof was that true name was different from that alleged, but person was generally known by both. *Hainey*, 107/711, 33 S. E. 418.

As to proceeding in which perjury was committed, when fatal. *Wilson*, 115/209, 41 S. E. 696, 90 Am. St. R. 104.

Cured by amendment. *Macon Ry. Co.*, 4 A. 313, 61 S. E. 290; *Realty Co.*, 4 A. 404, 61 S. E. 832; *Murphy*, 4 A. 522, 61 S. E. 1133.

Between facts and conclusion alleged, when not fatal (that railroad employee suing for injury was a passenger). *Southern Ry. Co.*, 4 A. 672, 62 S. E. 141.

From indictment as to name. *Jackson*, 134/473, 68 S. E. 71.

Immaterial, new trial not authorized. *Bales*, 3 A. 97, 59 S. E. 316; *Southern Ry. Co.*, 3 A. 458, 60 S. E. 297. As to identity of property injured (heifer). *S. A. L. Ry.* 3 A. 644, 60 S. E. 253.

As ground to defeat recovery for injury by negligence. *Purvis*, 136/852, 72 S. E. 343.

As to ownership and possession. *Jackson*, 124/135, 52 S. E. 155. None in allegation and proof as to procuring money. *McCoy*, 124/220, 52 S. E. 434.

As to sale of liquor. *Barlow*, 127/58, 56 S. E. 131.

When fatal; public highway. *Johnson*, 1 A. 195, 58 S. E. 265. To be material and fatal, must be apparent and uncontradicted; as, different initials, same surname. *Ga. So. Ry. Co.*, 1 A. 204, 58 S. E. 236.

When not fatal, as to conduct of injured workman. *King Mfg. Co.*, 1 A. 403, 407, 58 S. E. 115.

Variance—(Continued).

In corporate name of owner, rule as to. *Davis*, 105/811, 32 S. E. 158.

As to false swearing. *Thompson*, 118/330, 55, 45 S. E. 410.

Difference of $1\frac{1}{4}$ per cent. commission rate, not fatal. *Hightower*, 118/277, 45 S. E. 267. Exhibit not materially variant from allegation. *Langley*, 118/592, 45 S. E. 486, 98 Am. St. R. 133.

In names (railroad and railway), when not substantial. *Parramore*, 132/642, 64 S. E. 660.

Not result of alleging a promise and proving an implied but not express one. *Jackson*, 132/54, 63 S. E. 823. As to delivery of notes for "collateral." *Citizens Bank*, 132/771, 65 S. E. 81.

Material, in testimony as to "land" and "property," in setting up nuncupative will. *Harp*, 148/22, 95 S. E. 691.

Material, nonsuit for, how prevented. *Rice*, 3 A. 573, 60 S. E. 301. Requires new trial. *Pinson*, 3 A. 664, 60 S. E. 329.

None by omission of "Jr." from name. *Taylor*, 138/826, 76 S. E. 347.

None where ownership laid in Mrs. G. B., and proof is that R. S. B., wife of G. B., is owner. *Weaver*, 116/550, 42 S. E. 745. None, as to place of delivery of goods sold. *Bloom*, 116/784, 43 S. E. 54.

Not apparent, where order to servant alleged, and request or suggestion proved. *Fenn*, 120/665, 48 S. E. 141. Verdict set aside for, where no proof of incapacity of one of three alleged to be incapable to contract. *Barlow*, 120/1015, 48 S. E. 344.

Did not appear, in suit for unpaid subscription to stock. *Crawford*, 130/522, 61 S. E. 117.

When arrest of judgment is not remedy for. *Seals*, 107/713, 33 S. E. 392.

When not caused by proof of time different from that alleged in indictment. *Wheeler*, 4 A. 325, 61 S. E. 409.

When not material, between allegation that a car moved forward and proof that it moved backward. *Macon Ry. Co.*, 4 A. 313, 61 S. E. 290.

When not result from alleging that ownership is unknown, and proving ownership. *Ray*, 4 A. 67, 60 S. E. 816.

When too late to object to testimony as causing. *Macon Ry. Co.*, 4 A. 317, 61 S. E. 290.

Where indictment was for trespass on lands of A. and B., and proof showed it was on land of A. or B. *Eubank*, 105/612, 31 S. E. 741.

Venue, proof of, insufficient. *Cooper*, 106/120, 32 S. E. 23. *M., D. & S. R. Co.*, 10 A. 104, 72 S. E. 936; *Keys*, 112/398, 37 S. E. 762, 81 Am. St. R. 63.

Testimony giving name of county, but not State, sufficient, where the trial was in a county of that name. *Lewis*, 129/731, 59 S. E. 782.

Verdict directed, error, where evidence made an issue as to character of possession and bona fides of entry. *Smallwood*, 127/41, 58 S. E. 99.

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Warranty, breach of; burden of proof; insufficient evidence to make case. *Osburn*, 104/145, 30 S. E. 656.

Of title, breach of; what evidence not sufficient to show eviction, or its equivalent, under paramount outstanding title. *Burns*, 132/349, 64 S. E. 113.

Weight and credibility of evidence, for jury. Court's charge should not decide for them. *Raleigh R. Co.*, 106/575, 32 S. E. 622; *Calvin*, 118/74, 44 S. E. 848.

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Charge of court sufficient as to. *Watkins*, 19 A. 234, 91 S. E. 284; *Chewing*, 18 A. 11, 88 S. E. 904. Erroneous charge as to. *Merritt*, 107/676, 34 S. E. 361.

Not matter for charge to jury in criminal case, except that State must

prove guilt beyond reasonable doubt. *Mill*, 2 A. 398, 58 S. E. 673.

Of testimony, in province of jury; not of reviewing court. *Groover*, 148/795, 798, 98 S. E. 503.

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14. WITNESSES.

Adultery, incompetency of party to suit instituted in consequence of, to testify at the trial. *Graves*, 117/818, 45 S. E. 239.

Whether husband or wife of one with whom adultery is charged to have been committed may testify to the fact of marriage, on trial for. *Thomas*, 115/235, 41 S. E. 578.

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Character of witness, evidence to support, not admissible before attack thereon. *Smith*, 147/689, 95 S. E. 281. Mere conflict of testimony does not authorize proof of good character. *Holland*, 17 A. 311, 86 S. E. 739. No reversible error in allowing testimony as to, when no objection made. *Barco*, 5 A. 372, 63 S. E. 224.

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Bad, no reason for reviewing court to set aside verdict. *Dewberry*, 9 A. 822, 72 S. E. 282. When allowable to cross-examine as to specific acts, and reputation for committing a certain offense. *Moulder*, 9 A. 438, 71 S. E. 682.

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Bad, as affecting credibility or impeachment. *Sindy*, 120/202, 47 S. E. 554; *Ector*, 120/543, 48 S. E. 315.

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For truthfulness; what testimony not admissible. *Gordon*, 141/348, 80 S. E. 1007.

In neighborhood in which he works but does not reside, impeachment by proof of. *Atlantic & B. R. Co.*, 117/47, 43 S. E. 456.

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Questions as to, what proper, on examination of witness introduced to sustain. *Barnwell*, 105/396, 31 S. E. 116.

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That evidence introduced for sole purpose of impeachment could not be considered for any other purpose, proper. *Griggs*, 17 A. 304, 86 S. E. 726.

On impeachment authorized. *Partee*, 19 A. 752, 92 S. E. 306.

Proper, as to impeachment. *Citizens National L. Ins. Co.*, 13 A. 30, 78 S. E. 683; *Wimberly*, 13 A. 671, 79 S. E. 767; *Middle Ga. R. Co.*, 104/582, 30 S. E. 771; *Huff*, 104/521, 30 S. E. 808.

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E. 669; *Jenkins*, 2 A. 627, 58 S. E. 1063; *Dawson*, 2 A. 637, 58 S. E. 1065.

Incorrect, as to how witnesses may be impeached. *Harper*, 17 A. 561, 87 S. E. 808.

Inaccurate charges as to impeachment, when not cause for reversal. *O'Dell*, 120/152, 47 S. E. 577. Charge on impeachment no error as against party who has introduced no testimony. *Cole*, 120/485, 48 S. E. 156.

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Effect of impeaching evidence, not unduly limited by. *Southern Ry. Co.*, 6 A. 45, 64 S. E. 308. Inaccurate, on impeachment not require reversal, here. *Catchings*, 6 A. 790, 65 S. E. 815.

When error to omit charge that testimony of impeached witness should be disregarded unless corroborated. *Plummer*, 111/839, 36 S. E. 233. Error in refusing to charge as to need of corroboration. *Columbus R. Co.*, 12 A. 676, 78 S. E. 52.

On impeachment, when no basis for. *Campbell*, 124/432, 52 S. E. 914.

No error in instruction that witness could be impeached by proof of bad "moral" character. *Sparks*, 4 A. 13, 60 S. E. 809.

No error in charging jury that witness may be impeached by disproving "testimony testified to" by him. *Clarke*, 5 A. 605, 63 S. E. 606.

No error in charging jury that they may accept explanation of witness as to why he made contradictory statements, though not sustained by other facts. *Solomon*, 10 A. 469, 73 S. E. 623.

Error to charge jury that if an impeached witness is corroborated, it is their duty to believe him. *Shanon*, 15 A. 346, 83 S. E. 156.

Sustaining witness by proof of good character; evidence sufficient to authorize instruction as to this. *Gordon*, 10 A. 35, 72 S. E. 544.

Failure to specify witness whose credibility was attacked, no error in

charge to jury; better not to do so. *Woodard*, 5 A. 447, 63 S. E. 573.

As to impeachment by proof of contradictory statements and of bad character, how limited. *Kelly*, 118/329, 45 S. E. 413.

Where judge charges jury on law as to impeachment, he should charge fully; judge here should have charged as to weight of testimony of impeached witness. *Harper*, 17 A. 561, 87 S. E. 808; *Fite*, 16 A. 22, 84 S. E. 485.

Child (eight years of age) held incompetent as witness, her answers showing ignorance as to nature of an oath. *Warthen*, 11 A. 151, 74 S. E. 894. Child held competent. *Rogers*, 11 A. 814, 76 S. E. 366. Not excluded because of ignorance as to "where she would go after death if she failed to do right." *Berry*, 9 A. 870, 72 S. E. 433.

Competency of, as witness. *Gantz*, 18 A. 156, 157, 88 S. E. 993; *Polk*, 19 A. 332, 91 S. E. 439. Discretion of judge after examination. *Holden*, 144/338, 87 S. E. 27.

Chinaman, competency of, as witness..

Gantz, 18 A. 156, 157, 88 S. E. 993.

Competency of witness. *Augusta Naval Stores Co.*, 133/138, 65 S. E. 370; *Thornton*, 133/825, 67 S. E. 97, 134 Am. St. R. 226.

Preliminary question of, decided by the court. *Central Georgia Power Co.*, 139/1, 76 S. E. 387, Ann. Cas. 1914A, 880.

Convict competent as witness. *Dixon*, 116/186, 42 S. E. 357.

Corroboration of impeached witnesses, by newly discovered evidence in support of motion for new trial. *Holton*, 9 A. 419, 71 S. E. 599.

Of witness by his own statements; error in admitting testimony for this purpose. *Strickland*, 6 A. 537, 65 S. E. 300.

Credibility, as affected by fact that witness was a tramp. *Central Ry. Co.*, 5 A. 562, 565, 63 S. E. 642. By fact that witness was working for police in detection of crime. *Clark*, 5 A. 605, 63 S. E. 606.

Attacked by showing bias. *Walker*, 6 A. 61, 64 S. E. 310.

Improbability of testimony, and bad character, ill will, and interest of State's witness, no reason for setting aside conviction. *Ford*, 13 A. 68, 78 S. E. 782.

Instruction that in determining as to, the jury might consider the number of witnesses, discussed. *Dickerson*, 121/137, 48 S. E. 942.

Interest of witness as affecting; failure to charge jury as to, not ordinarily require new trial. *Southern Bell Tel. Co.*, 12 A. 464, 77 S. E. 312.

Jury can not arbitrarily disregard positive, unequivocal, and uncontradicted testimony of unimpeached witness in rebuttal of prima facie presumption. *A. C. L. R. Co.*, 21 A. 81, 94 S. E. 65.

Of one against several, for jury. *Powell*, 120/181, 47 S. E. 563.

Jury may believe one in preference to many witnesses contradicting him; verdict conclusive as to credibility. *Hudgins*, 7 A. 785, 68 S. E. 336. When reversible error to exclude testimony affecting credibility. *McLendon*, 7 A. 688, 67 S. E. 846.

Jury may believe part and reject part of the testimony of a witness. *Sappington*, 115/856, 42 S. E. 233.

May be affected by showing motive of witness. *Billings*, 8 A. 672, 70 S. E. 36.

Rule as to, not applicable because witness is a party. *Southern Bank*, 108/796, 33 S. E. 974.

Of female witness affected by showing that she is paramour of accused. *Lundy*, 144/833, 88 S. E. 209. See *Willis*, 144/831, 88 S. E. 208.

Where verdict may be set aside because testimony is incredible. *Patton*, 117/230, 43 S. E. 533.

Charge of court as to, not prejudicial to accused. *Robinson*, 128/258, 57 S. E. 315.

Of witness contradicted by six. *Pyles*, 3 A. 29, 59 S. E. 193. Of one witness contradicted by another introduced by

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same side. *Barber*, 3 A. 598, 60 S. E. 285; *Turner*, 120/483, 48 S. E. 176; *Moultrie Co.*, 120/730, 48 S. E. 143.

Determined by jury. *Alexander*, 1 A. 289, 57 S. E. 996; *Plummer*, 1 A. 507, 57 S. E. 969; *Jacobs*, 1 A. 519, 57 S. E. 1063; *Scribner*, 1 A. 528, 58 S. E. 240; *Moody*, 1 A. 773, 58 S. E. 262; *W. & A. R. Co.*, 1 A. 814, 57 S. E. 956; *Ferguson*, 1 A. 843, 58 S. E. 57. *L. & N. R. Co.*, 138/324, 75 S. E. 328; *N. C. & St. L. Ry.* 138/864, 76 S. E. 357; *L. & N. R. Co.*, 136/675, 71 S. E. 1102; *Waycaster*, 136/95, 70 S. E. 883.

Of witness for prosecution could not be affected by proof that the prosecuting attorney made an appeal for clemency toward him in another case. *Harrell*, 121/607, 49 S. E. 703.

Joint indictment against witness and accused on trial admitted solely on question of. *McCray*, 134/417, 68 S. E. 62, 20 Ann. Cas. 101.

Left to jury; not required to believe him who has least inducement to falsify and best means of knowing. *Hudson*, 104/131, 30 S. E. 688.

May be rejected by jury, on consideration of interest and of circumstances inconsistent with his testimony. *Detwiler*, 120/638, 48 S. E. 142; *Ga. So. R. Co.*, 120/657, 48 S. E. 146.

Interest of agent or employee as affecting. *L. & N. R. Co.*, 142/771, 83 S. E. 792.

Of witness who turned State's evidence, open to argument with assertion by counsel without evidence and based on prisoner's statement. *Parker*, 3 A. 12, 59 S. E. 204.

One believed by jury in preference to many unimpeached witnesses; verdict conclusive as to. *Jolly*, 5 A. 454, 63 S. E. 520. Not evidence of prejudice or bias of jury. *Atlantic R. Co.*, 5 A. 782, 63 S. E. 1126.

Relationship of witness and accused, for purpose of showing bias, or fear. *Kimbrough*, 9 A. 301, 70 S. E. 1127.

Relationship, or fact that witness is jointly indicted with defendant, as af-

fecting; proper charge on. *Cochran*, 113/726, 39 S. E. 332.

Rule *falsus in uno, falsus in omnibus*, applies only where a witness swears to a falsehood knowingly and wilfully; charge of court discussed. *Glenn*, 121/80, 48 S. E. 684.

Voluntary attendance of non-resident witness, merely a circumstance for consideration in determining as to weight of testimony. *Sewell*, 11 A. 158, 74 S. E. 1039.

What considered by jury in determining. *Jordan*, 130/406, 60 S. E. 1063.

Circumstances tending to show excited state of mind, held irrelevant. *Pullman's Co.*, 101/737, 28 S. E. 989.

Of witness in action for slander, not affected by the fact that she first communicated the slanderous words to plaintiff. *Proctor*, 127/134, 56 S. E. 111.

Of witness (prosecutrix in rape), matters affecting. *Jackson*, 132/546, 64 S. E. 653.

On question of, his previous written statement, relevant. *Central Ry. Co.*, 120/479, 47 S. E. 956.

Question on cross-examination to affect, immaterial. *Lennard*, 104/549, 30 S. E. 780.

Of witness whose examination was not finished, properly left to jury. *Gale*, 135/351, 69 S. E. 537.

Cross-examination allowed, where witness examined as to incompetent matter, if no motion to withdraw the testimony on direct examination. *Lydia Pinkham Co.*, 107/138, 33 S. E. 945.

Competent to inquire whether witness would take named sum for property. *Siniard*, 145/541, 89 S. E. 517. See *Etheridge*, 149/44, 99 S. E. 37.

Discretion of judge in controlling; not abused in allowing State's counsel to cross-examine his own witness. *Fouraker*, 4 A. 692, 62 S. E. 116.

No error in disallowing question, in view of preceding answers. *Walden*, 16 A. 408, 85 S. E. 452.

Improper restriction of. *Barawell*, 105/396, 31 S. E. 116.

Proper questions in sifting witness as to alibi. *Stephens*, 16 A. 144, 84 S. E. 560.

Right of; and effect of curtailment by witness falling sick. *Gale*, 135/351, 69 S. E. 537.

Not unduly restricted by judge. *Owens*, 11 A. 419, 425, 75 S. E. 519.

Right to sift witnesses on; range of questions. *Frank*, 141/245, 80 S. E. 1016.

Showing of witness's lack of knowledge of matters testified to on direct examination. *Linder*, 1 A. 60, 57 S. E. 975.

Sifting motive or feeling of witness. *Glover*, 15 A. 45, 54, 82 S. E. 602.

To ascertain bias of witness, proper. *Boyett*, 16 A. 150, 84 S. E. 613. As to matter tending to show bias of witness, error in not allowing. *Walker*, 6 A. 61, 64 S. E. 310.

To show relationship of parties, bias, and fear on part of witness, allowed, when. *Kimbrough*, 9 A. 301, 70 S. E. 1127.

To test truthfulness of witness is not an investigation of transactions inquired about. *Andrews*, 118/4, 43 S. E. 852.

Waiver of objection to restriction of, where counsel apparently acquiesced in judge's announcement as to. *Martin*, 15 A. 496, 83 S. E. 872.

Death as affecting competency of witness. *Augusta &c. R. Co.*, 133/138 55 S. E. 370; *Thornton*, 133/825, 67 S. E. 97. 134 Am. St. R. 226; *Fulton*, 140/66, 78 S. E. 414; *Banks*, 140/640, 79 S. E. 572; *Johnston*, 120/767, 48 S. E. 373; *Skeen*, 120/1057, 48 S. E. 425; *Moultrie Co.*, 120/730, 48 S. E. 143; *Bank*, 120/944, 48 S. E. 393; *Heard*, 101/691, 31 S. E. 216.

Of party to transactions, as affecting competency of testimony. *Sanders*, 124/684, 52 S. E. 884; *Garmany*, 124/882, 53 S. E. 669, 110 Am. St. R. 207; *Zipperer*, 124/895, 53 S. E. 505; *Castleberry*, 135/528, 69 S. E. 817.

Of opposite party to pending suit, competency of witness as affected by. *Willis*, 136/720, 71 S. E. 1048.

Of party to contract, as affecting competency of witness. *Hall*, 139/13, 14, 76 S. E. 566; *Crawford*, 139/654, 78 S. E. 30, 44 L. R. A. (N. S.) 773.

Of attesting witness; admissibility of proof of handwriting. *Bowen*, 136/860, 72 S. E. 340.

Of contracting party rendered plaintiff's employee incompetent as witness. *Sherman*, 139/781, 78 S. E. 123.

Inadmissibility of defendant's testimony of communications with deceased agent of corporation. *Dolvin*, 131/300, 62 S. E. 198.

Inadmissibility of transactions and communications with deceased person, knowledge of which was acquired by witness as attorney. *Sims*, 131/263, 62 S. E. 192.

Inadmissibility of defendant's testimony of execution of deed by deceased grantor of plaintiff. *Fullbright*, 131/342, 62 S. E. 188.

Plaintiff's grantor as witness not rendered incompetent by death of his immediate grantor. *Priester*, 135/694, 70 S. E. 646.

Competency of witness in suit against representative of decedent. *Gomez*, 106/513, 32 S. E. 600.

Competency of witness where administrator of intestate is party. *Wilkes*, 138/407, 75 S. E. 353; *Bland*, 138/712, 76 S. E. 50; *Wall*, 139/270, 77 S. E. 19, 45 L. R. A. (N. S.) 583.

Witness competent, though defendant in ejectment, as to transactions between him and decedent respecting the land sued for. *Oliver*, 114/593, 40 S. E. 826. Defendant to suit by surviving partner is competent, as to transactions with deceased partner. *Whitley*, 114/668, 40 S. E. 838.

Admissibility of transcript from shorthand report of dead witness's testimony on former trial. *Jones*, 128/23, 57 S. E. 313. Testimony of deceased witness, on former trial, in

- part read, other party may read the rest as evidence of first party. *Waller*, 102/684, 28 S. E. 284.
- Declarations of witness**, that he was present and saw occurrence, not admissible to sustain him. *Atlanta R. Co.*, 116/439, 42 S. E. 864.
- Defense**, witness for, not properly allowed to testify before plaintiff has opened his case, except by consent. *Conant*, 120/568, 48 S. E. 234.
- Delivery of deed**, intention of grantor, he may testify as to. *Toole*, 107/478, 33 S. E. 686.
- Detective or policeman**, charge of court as to testimony of, error. *McWhorter*, 22 A. 251, 95 S. E. 1013. Proper instructions to jury. *Watts*, 9 A. 500, 71 S. E. 766. Detective's interest in reward, not disqualify as witness. *Union*, 7 A. 27, 66 S. E. 24; *McLendon*, 7 A. 687, 67 S. E. 846; *Gordon*, 7 A. 692, 67 S. E. 893.
- Disclaimers of title by defendant's predecessor**, plaintiff allowed to testify to. *Alaculsey Lumber Co.*, 146/310, 91 S. E. 104.
- Discredit of witness**. *Hayes*, 126/95, 54 S. E. 809; *Perdue*, 126/112, 113, 54 S. E. 820.
- Admissibility of previous contradictory statement for. *Wrightsville & C. R. Co.*, 136/151, 71 S. E. 126.
- What evidence admissible for. *Rawlins*, 124/32, 52 S. E. 1; *Central Ry. Co.*, 124/143, 52 S. E. 161.
- When execution against him was not admissible for. *Slappey*, 136/692, 71 S. E. 1075.
- When writing was best evidence for; and what question improper. *Savannah El. Co.*, 130/421, 60 S. E. 1056.
- When indictment against him admissible for. *Hayes*, 126/95, 54 S. E. 809; *Purdee*, 118/798, 45 S. E. 606. Who is party, by contrary facts and circumstances. *Armstrong*, 118/168, 44 S. E. 996; *Farmer*, 118/289, 45 S. E. 244.
- Discrepancies in evidence**, when no reason for discrediting witness. *Blanchard*, 8 A. 419, 420, 69 S. E. 313.
- Discretion of judge to require witnesses to appear and testify**, instead of receiving affidavits, on hearing of rule. *Warner*, 124/391, 52 S. E. 446, 4 Ann. Cas. 180.
- Divorce**; competency of party as witness, touching cruelty, not as to adultery. *Arnold*, 141/158, 80 S. E. 652.
- Duty to give evidence**. *Crosby*, 8 A. 463, 69 S. E. 582.
- Entrapping**, rule as to, not applied where testimony is not prejudicial to party calling the witness. *Beach*, 138/265, 75 S. E. 139. Entrapped party's impeachment of his witness, when not allowed. *Carter*, 17 A. 244, 86 S. E. 413.
- Examination of witness**. *Lauchheimer*, 126/261, 55 S. E. 55.
- By judge; practice discussed. *Ray*, 4 A. 71, 60 S. E. 816. *Johnson*, 122/670, 50 S. E. 488; *Grant*, 122/740, 50 S. E. 946. When no error for reversal. *Gillis*, 132/762, 64 S. E. 1096.
- By judge was not prejudicial to accused. *Lampkin*, 145/40, 88 S. E. 563. Questions not argumentative or indicative of opinion. *Ausley*, 145/751, 89 S. E. 1071. Should not appear to be prejudicial. *Washington*, 145/814, 90 S. E. 43.
- Discretion of judge as to order and manner of examining, and allowing recall, is broad. No ground for reversal, unless manifestly unfair and prejudicial. *Maddox*, 8 A. 817, 70 S. E. 214; *Minchew*, 5 A. 154, 62 S. E. 716.
- Of witnesses out of hearing of each other, discretion of court as to. *Talley*, 2 A. 395, 58 S. E. 667.
- Redirect, repeating questions put on direct examination; no reversal for allowing. *Harrell*, 9 A. 625, 71 S. E. 1030.
- Improper practice to exhibit and ask if it was his evidence and if true. *Gordon*, 141/347, 80 S. E. 1007.
- Of witness sought to be impeached, how confined, on redirect. *Ga. Ry. Co.*, 112/551, 50 S. E. 478.
- Failure to call witness**, effect of. *Long*, 126/109, 54 S. E. 906. When not give rise to presumption against party.

Davis, 4 A. 441, 61 S. E. 843. Witness produced, not introduced, argument of counsel as to. **W. & A. R. Co.**, 102/320, 29 S. E. 104.

Of State to introduce witness (though the sole eye-witness), no ground for new trial. **Harper**, 131/771, 63 S. E. 339.

To produce witness, presumption as to. **Central R. Co.**, 113/175, 38 S. E. 394. Rule as to presumption against party not producing; when not applied against State in criminal case. **Harper**, 129/770, 774, 59 S. E. 792.

Feeling of witness, state of, shown by record of proceedings against his relatives for injuring property of one not the prosecutor. **Shaw**, 102/661, 29 S. E. 477.

Former testimony of witness, when reading part of, does not make him witness of party reading. **Hope**, 142/311, 82 S. E. 929. Witness out of the State, former testimony admitted, when. **Owen**, 111/885, 36 S. E. 969. When witness not sustained by showing testimony to be the same as on former trial. **Brantley**, 133/25, 65 S. E. 426.

Husband, when incompetent to testify. **Smith**, 14 A. 614, 81 S. E. 912.

Can testify to state of wife's health. **City of Cedartown**, 2 A. 588, 59 S. E. 836.

Incompetent to testify on trial of wife; rule applied in municipal court. **Stephens**, 15 A. 519, 83 S. E. 794. No exception as to trial for crime on his person. **Ector**, 10 A. 777, 74 S. E. 295.

Disqualified as witness in wife's suit for earnings against executor of decedent. **Belcher**, 135/73, 68 S. E. 839.

Admissibility of letters found in husband's pocket by wife, on trial of application for alimony. **Carnes**, 138/2, 74 S. E. 785.

Communications between husband and wife proved by one who overheard. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Inadmissibility of confidential communications between husband and wife. **Holloway**, 140/381, 78 S. E. 928.

Woman as witness may deny relation of husband and wife between herself and accused. **Hoxie**, 114/19, 39 S. E. 944.

Incompetency of husband and wife as witness. **Hall**, 141/7, 80 S. E. 307; **Arnold**, 141/158, 80 S. E. 652. Husband or wife of one of defendants jointly tried can not testify for the other. **Stephens**, 106/117, 32 S. E. 13.

Testimony of conduct and statements by husband (accused) and wife was not objectionable as incompetent. **Bexley**, 141/1, 80 S. E. 314.

Ignorance of witness as to where he would go after death if he swore falsely, no disqualification. **Gantz**, 18 A. 154, 156, 88 S. E. 993.

Impeachment of witnesses, law as to. **Price**, 137/71, 72 S. E. 908; **Arnold**, 131/494, 62 S. E. 806.

By "disproving the facts testified to," success of, for jury. **Middle Ga. R. Co.**, 104/582, 30 S. E. 771. Not to be sustained by proof of general good character. **Harper**, 17 A. 561, 87 S. E. 808; **Surles**, 148/538, 97 S. E. 538.

By contrary testimony of the witness on former trial, as shown by approved brief of evidence. **Mays**, 134/870, 68 S. E. 738.

Admissibility of record of contradictory testimony on another trial; answer that testimony set out in petition for certiorari was "practically correct," not render it admissible. **Harper**, 14 A. 603, 81 S. E. 817.

Admissibility of testimony as to contradictory statements of one whose affidavit was used as evidence. **Parker**, 17 A. 252, 87 S. E. 705.

By previous affidavit of the witness. **Owens**, 139/92, 76 S. E. 860. By proof of contradictory statement in affidavit of witness who has testified to lewd conduct of female, that he considered her chaste and virtuous. **Jordan**, 120/864, 48 S. E. 352. Discretion of judge to require retirement of jury before

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allowing affidavit to be read to witness. *Robinson*, 120/311, 47 S. E. 968.

By proof of bad feeling towards party; witness can not be cross-examined as to such feeling, where not denied. *Sassen*, 129/548, 59 S. E. 255.

By proof of contradictory expression of opinion. *Bates*, 4 A. 486, 61 S. E. 888.

By proof of contradictory testimony at coroner's inquest. *Summerlin*, 130/791, 61 S. E. 849.

By previous conviction of witness of crime, not by testimony, but by judgment of convicting court. *Howard*, 144/169, 86 S. E. 540.

By conviction of crime involving moral turpitude. *Powell*, 122/571, 50 S. E. 369.

By proof of conviction of offense not involving moral turpitude (conviction in police court, for fighting), not allowed. *Curry*, 17 A. 312, 86 S. E. 742; *Howard*, 144/169, 86 S. E. 540. Liquor-selling. *Wheeler*, 4 A. 325, 61 S. E. 409; *Edenfield*, 14 A. 401, 81 S. E. 253.

Testimony not admissible for, that witness once carried a pistol concealed. *Bivins*, 147/229, 93 S. E. 213.

By record of indictment and plea of guilty; what testimony admitted in connection. *Hope*, 142/320, 82 S. E. 929. Conviction should be proved by record. *Wheeler*, 4 A. 325, 61 S. E. 409. Parol proof that witness had been convicted of crime, not allowed. *Morgan*, 17 A. 124, 86 S. E. 281.

Foundation not laid, but no harm resulted from admission of testimony for purpose of impeachment. *Meriwether*, 18 A. 773, 90 S. E. 731.

Improper form of question to lay foundation for: "you tried to lie," etc. *Durham*, 138/817, 76 S. E. 351.

Jury not required to believe testimony though not contradicted and not impeached. *Haverty Furniture Co.*, 15 A. 620, 21, 84 S. E. 138.

Mere indictment for embezzlement not admissible for. *Slappey*, 136/692, 71 S. E. 1075.

Impeachment—(Continued).

Newly discovered evidence merely impeaching, not require new trial. *Jenkins*, 13 A. 82, 78 S. E. 828.

New trial required because of error in admitting, for the purpose of impeachment only, testimony as to declarations of one who was not a party to the case. *McKay*, 17 A. 397, 87 S. E. 158.

By hearsay, not legal. *Duggan*, 124/438, 52 S. E. 748.

No valid objection to testimony offered for, that it was hearsay. *Goldberg*, 144/784, 87 S. E. 1077.

Of medical expert, proper mode of, by testimony as to general reputation or wrong diagnosis in particular cases. *Southern Ry. Co.*, 10 A. 531, 73 S. E. 763.

Of witness by party introducing him. *Williams*, 16 A. 697, 85 S. E. 973; *Gantz*, 18 A. 154, 88 S. E. 993. Of party's own witness who has entrapped him by prior contradictory statement. *Beach*, 138/265, 75 S. E. 139. Rule not applied where testimony not prejudicial. *Nathan*, 131/48, 61 S. E. 994; *Rickerson*, 103/391, 33 S. E. 639. When not allowed. *Burns*, 20 A. 77, 92 S. E. 548. Not allowed on account of statements entrapping party, not made to him or his counsel by witness. *Carter*, 17 A. 244, 86 S. E. 413; *Luke*, 4 A. 538, 62 S. E. 110. Prosecuting attorney not allowed to prove that witness for State made contradictory statements to another. *Carter*, 17 A. 244, 86 S. E. 413. Not allowed, unless on showing of being entrapped. *Barber*, 3 A. 598, 60 S. E. 285; *O'Dell*, 120/152, 157, 47 S. E. 577. But party may prove matters by another witness, and so contradict the testimony of the first one introduced. *Turner*, 120/483, 48 S. E. 176; *Moultrie Co.*, 120/730, 48 S. E. 143.

By party introducing the witness. Party not held bound by testimony of adverse party. *Lovett*, 23 A. 623, 99 S. E. 156.

Party not heard to attack witness he offers. *Jeans*, 144/48, 85 S. E. 1055.

Impeachment—(Continued).

Foundation must be laid. *Penn*, 144/67, 86 S. E. 233. Valid and invalid objections to testimony offered. *Goldberg*, 144/784, 87 S. E. 1077.

Of sole witness of prevailing party, no ground for reviewing court to set aside verdict. *Augusta-Aiken Ry. Corp.*, 12 A. 164, 76 S. E. 1044; *Watson*, 13 A. 182, 78 S. E. 1014; *Cook*, 13 A. 308, 79 S. E. 87.

Of witness for prosecution, no ground for setting aside conviction. *Choran*, 22 A. 119, 95 S. E. 531; *Gordon*, 10 A. 36, 72 S. E. 544; *Holloway*, 10 A. 49, 72 S. E. 512; *Walker*, 5 A. 367, 63 S. E. 142.

Of sole witness for prosecution, no ground for reviewing court to set aside conviction. *Pace*, 9 A. 203, 70 S. E. 967; *Simmons*, 9 A. 552, 71 S. E. 876. Witness believed by the jury will not be held to have been successfully impeached. *Baird*, 9 A. 232, 70 S. E. 990.

Impeachment, and successful contradiction in part, distinguished. *Elliot*, 138/24, 74 S. E. 691.

Rebuttal of testimony offered for purpose of. *Brown*, 129/92, 58 S. E. 702.

Refusal to postpone trial to procure evidence for, when not erroneous. *Helms*, 136/799, 72 S. E. 246.

Repetition of substance of testimony given at coroner's inquest was admissible for. *Darby*, 144/759, 87 S. E. 1067.

Rule as to laying foundation for, not applied to proof of contradictory statement of accused at former trial. *Smith*, 17 A. 298, 86 S. E. 660.

Sustaining witness by proof of good character; what necessary to render such testimony admissible; error in admitting such testimony to sustain witness attacked only by defendant's statement in criminal case. *Stockton*, 20 A. 186, 92 S. E. 1019.

What testimony sustaining witness not allowable in reply to effort of. *Brantley*, 133/265, 65 S. E. 426.

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Impeachment—(Continued).

When testimony as to good character of witness is not admissible. *Williams*, 15 A. 311, 82 S. E. 817.

Writings used for comparison of handwriting did not become admissible for. *Ginn*, 142/420, 83 S. E. 118.

By contradictory testimony of the same witness in brief of evidence on former trial. *Cox*, 10 A. 492, 73 S. E. 751.

By declarations that would not be admissible to prove the fact denied by witness. *Ham*, 2 A. 71, 58 S. E. 316.

By parol evidence that witness committed bigamy, not allowed. *Green*, 125/742, 54 S. E. 724.

By evidence of admission made by witness. *Perdue*, 126/112, 54 S. E. 820. By evidence of intimate relation—paramour. *Id.*

Proving that witness was paramour of accused did not require previous laying of foundation for. *Lundy*, 144/833, 88 S. E. 209.

Witness allowed to testify that he would believe on oath a certain other witness, although he had testified that the character of that witness was bad. *Gibson*, 20 A. 73, 93 S. E. 48.

By proving lack of chastity of female witness, not competent. *Willis*, 144/831, 88 S. E. 208; *Garrett*, 20 A. 750, 751, 93 S. E. 232.

Bad reputation as to chastity, or specific acts, not admissible, to impeach witness. Former decisions discussed and distinguished. *Rudolph*, 16 A. 353, 85 S. E. 365; *Black*, 119/747, 748, 47 S. E. 370; *Connell*, 9 A. 818, 72 S. E. 304.

Woman can not be impeached or discredited as witness by proof of specific acts of unchastity, or by showing that she had an illegitimate child. *Morgan*, 17 A. 124, 86 S. E. 281.

Of woman testifying to rape on her, by proof of repute of lewdness; not of specific unchaste acts. *Wheeler*, 148/508, 97 S. E. 408.

By proof of contradictory expression of decided conviction. *Central Ry. Co.*, 114/812, 40 S. E. 259.

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Declaration received to impeach, not evidence of thing declared. *Ga. R. Co.*, 125/87, 54 S. E. 76.

By proof of past commission of perjury. *Shaw*, 102/660, 29 S. E. 477; *Reinhart*, 102/691, 29 S. E. 443.

By proof of prior declarations inconsistent with testimony. *Cox*, 124/95, 52 S. E. 150. Written statement, when must be shown to witness or read in his hearing. *Washington*, 124/424, 52 S. E. 910.

By proof of reputation in neighborhood in which witness works but does not reside. *Atlanta & B. R. Co.*, 117/47, 43 S. E. 456.

By proof of statements at variance with depositions, foundation for, how laid. *Raleigh R. Co.*, 113/866, 39 S. E. 555.

By proof of testimony on commitment trial. *Haines*, 109/258, 35 S. E. 141. Or at coroner's inquest. Such testimony may be proved by one who heard it, though taken down in writing. *McKinney*, 119/467, 46 S. E. 719.

By questions on cross-examination, as to conduct of witness; what not allowed. *Allred*, 126/537, 55 S. E. 178.

By record of conviction of misdemeanor not involving moral turpitude. *Andrews*, 118/1, 43 S. E. 852.

By record of conviction of one jointly indicted with accused. *Shaw*, 102/661, 29 S. E. 477.

By report of testimony at prior trial, foundation for, how laid. *Taylor*, 110/151, 35 S. E. 161.

By showing that the witness attempted to suborn or improperly influence another witness. *Parker*, 11 A. 252, 75 S. E. 437.

By statement of presiding magistrate, that testimony is different from that of same witness at former trial, not allowed. *Erwin*, 120/151, 47 S. E. 512.

Continuance to obtain, when refused. *Salmons*, 118/763, 45 S. E. 611.

Corroboration of attacked witness. *Haywood*, 12 A. 240, 76 S. E. 1077.

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Corroboration of impeached witness, by newly discovered testimony in support of motion for new trial. *Holton*, 9 A. 419, 71 S. E. 599.

Duty of jury to disregard testimony of impeached witness, unless corroborated in material particulars. *Pelham*, 11 A. 621, 75 S. E. 1062.

Foundation for, not required before showing that witness was paramour of accused. *Lundy*, 144/833, 88 S. E. 209. See *Darby*, 144/759, 87 S. E. 1067.

Great latitude allowed for cross-examination intended to discredit witness by showing bias or interest. *Griffin*, 18 A. 462, 89 S. E. 537.

Jury may believe testimony of witness who has admitted the falsity of his previous testimony. *Brown*, 17 A. 402, 87 S. E. 155; *Bishop*, 18 A. 715, 90 S. E. 369.

No discredit by discrepancy as to immaterial thing. *Mann*, 124/760, 53 S. E. 324, 4 L. R. A. (N. S.) 934. See *Chandler*, 124/821, 53 S. E. 91; *Garland*, 124/832, 53 S. E. 314. What meant by "material matter." *Luke*, 4 A. 543, 62 S. E. 110.

No error in excluding testimony offered to impeach witness on immaterial and irrelevant matter. *Jenkins*, 13 A. 82, 78 S. E. 828; *Atlanta Ry. Co.*, 118/449, 45 S. E. 949. Charge as to, correct. *Grant*, 118/804, 806, 45 S. E. 603. *Aliter*, *Kelly*, 118/329, 45 S. E. 413.

Of applicant for alimony by affidavit tending to disprove claim of marriage. *Roberts*, 114/590, 40 S. E. 702.

Of chief witness, not necessarily require new trial. *Yancey*, 2 A. 400, 58 S. E. 546; *Cothran*, 2 A. 437, 58 S. E. 544.

Method not considered as to which no evidence introduced. *Devereaux*, 140/225, 78 S. E. 849. Compare *Webb*, 140/779, 79 S. E. 1126.

Of witness who swears knowingly and wilfully false; qualification of rule

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as to entire disregard of his testimony. **Humphery**, 133/456, 66 S. E. 158.

One can not be impeached by proof of inadmissible matter which he has denied. **Black**, 119/749, 47 S. E. 370.

Prosecutor's admissions received for. **Belt**, 103/13, 29 S. E. 451.

Prospective witness not subject to attack by evidence tending to impeach. **Thompson**, 16 A. 832, 84 S. E. 591.

Question whether witness has been successfully impeached, for the jury alone. **Smith**, 17 A. 298, 86 S. E. 660; **Calhoun**, 17 A. 515, 87 S. E. 762; **Hagin**, 17 A. 515, 87 S. E. 769; **Shropshire**, 15 A. 345, 83 S. E. 152. Or for court trying case without jury. **Ramsey**, 15 A. 346, 83 S. E. 148.

Restoring credit of impeached witness. **Watson**, 13 A. 182, 78 S. E. 1014.

Right of witness to explain statement. **Ga. Ry. & El. Co.**, 4 A. 614, 62 S. E. 158.

Rule as to laying foundation for, not varied by inaccessibility of witness. **G., F. & A. Ry. Co.**, 4 A. 276, 61 S. E. 505.

Testimony explaining alleged contradiction, properly admitted. **Spearman**, 121/468, 49 S. E. 296.

Uncontradicted part of testimony may be disregarded, where the same witness has been contradicted as to other parts. **M., D. & S. R. Co.**, 10 A. 105, 72 S. E. 936.

Definition of "impeached." When used as synonymous with "attacked." **Smith**, 109/479, 35 S. E. 59.

Witness can not be supported by affidavit he made before making the one introduced. **Queen Ins. Co.**, 136/741, 72 S. E. 41.

Witness attacked may be believed without corroboration. **Rice**, 15 A. 505, 83 S. E. 868; **Sheffield**, 15 A. 514, 83 S. E. 871; **Hagin**, 17 A. 515, 87 S. E. 769; **House**, 17 A. 806, 88 S. E. 591; **Bishop**, 18 A. 715, 90 S. E. 369; **Sutton**, 18 A. 28, 88 S. E. 744; **Rudolph**, 16 A. 353, 85 S. E. 365; **Brown**, 10 A. 50, 72 S. E. 537; **Sims**, 5 A.

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850, 64 S. E. 99. No error in so charging jury, but better form of expression suggested. **Taylor**, 5 A. 243, 62 S. E. 1048. Witness who has contradicted himself may be believed without corroboration; code provision, that testimony of one who has knowingly sworn falsely should be disregarded, unless corroborated, does not abridge jury's right to determine as to credibility. **Ware**, 18 A. 107, 89 S. E. 155.

Testimony of impeached witness may be basis for legal verdict. **Haywood**, 114/111, 39 S. E. 948; **Soell**, 4 A. 341, 61 S. E. 514.

Witness discredited by his admissions on cross-examinations may be sustained by proof of good character. **Gazaway**, 15 A. 467, 83 S. E. 857.

Witness testifying falsely to one material thing, to be disregarded unless corroborated. **Columbus R. Co.**, 12 A. 676, 78 S. E. 52.

Appraisement of estate of deceased witness was not admissible for. **Deal**, 147/523, 94 S. E. 1013.

Witness sought to be impeached, not supported by proof of his other declarations. **Knight**, 114/48, 39 S. E. 928, 88 Am. St. R. 17.

Conduct of witness, father of alleged victim in rape case; delay in having accused arrested, admissible. **Merritt**, 107/675, 34 S. E. 361.

Error in admitting impeaching evidence did not require new trial. **Whipple**, 123/580, 51 S. E. 590.

Judge's remarks in excluding impeaching evidence, improper. **Cole**, 6 A. 798, 65 S. E. 839. Impeachment by showing conviction of crime. *Ib.*

Statutory methods for, not exclusive; erroneous charge as to. **Chapman**, 109/158, 34 S. E. 369.

Premature admission of impeaching testimony, when no cause for reversal. **Holland**, 148/277, 280, 96 S. E. 419.

Foundation for, when necessary. **Merritt**, 107/675, 34 S. E. 361.

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Admissibility of testimony offered to discredit witness. *Tiller*, 111/840, 36 S. E. 201. Impeaching testimony, not affirmative proof. *Atlantic R. Co.*, 5 A. 783, 63 S. E. 1126. Not used to prove the statements testified to have been made by the witness so attacked. *Columbus R. Co.*, 120/589, 48 S. E. 149. Error in rejecting, when immaterial. *Johnston*, 120/778, 48 S. E. 373. Not met by proof of declarations by witness to the same effect as his testimony. *Atlanta R. Co.*, 116/439, 42 S. E. 864.

By proof of character. *Moore*, 128/97, 57 S. E. 110.

By proof of bad character, not for consideration of jury, without evidence. *L. & N. R. Co.*, 142/771, 83 S. E. 792. Incompetent to prove that it is "bad as to truthfulness," etc. *Gordon*, 141/348, 80 S. E. 1007. What admissible; code section as to mode of impeachment impliedly excludes all other questions than those prescribed therein. *Taylor*, 17 A. 787, 88 S. E. 696; *Rudolph*, 16 A. 354, 85 S. E. 365.

By proof of bad character, and sustenance by testimony that witness would nevertheless believe the witness so attacked. *Suddeth*, 112/407, 37 S. E. 747; *Taylor*, 5 A. 238, 62 S. E. 1048.

Character of witness could not be attacked by showing his employment of a physician to treat woman not his wife. *Maddox*, 18 A. 614, 89 S. E. 1090.

No error in excluding testimony of one introduced to impeach a witness by proof of bad character, where he testified that under some conditions he would believe the witness under oath. *Dent*, 14 A. 269, 80 S. E. 548.

Credit of impeached witness (bad character). *Mitchell*, 110/272, 34 S. E. 576.

Witness can not be impeached by proving association with man of bad character. *W. & A. R. Co.*, 113/354, 38 S. E. 851.

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By proof of contradictory statements. *Atlanta R. Co.*, 2 A. 354, 58 S. E. 500; *Dawson*, 2 A. 637, 58 S. E. 1065; *Bone*, 102/387, 30 S. E. 845; *Wrightville &c. R. Co.*, 136/151, 71 S. E. 126; *Tucker*, 122/387, 50 S. E. 128; *Ga. Ry. Co.*, 122/551, 50 S. E. 478; *Ga. R. Co.*, 125/87, 54 S. E. 76; *Gibson*, 11 A. 148, 74 S. E. 905; *Bazemore*, 9 A. 29, 70 S. E. 261. The contradictory statements must be as to material facts. *Kennedy*, 9 A. 219, 70 S. E. 986; *Miller*, 9 A. 603, 71 S. E. 1021; *Sullivan*, 121/185, 48 S. E. 949. As to matters not relevant, not allowed. *Hudgins*, 109/197, 34 S. E. 364; *Watts*, 120/496, 48 S. E. 142; *Davis*, 113/749, 39 S. E. 295. Identity of witness with him to whom statement was made. *Taylor*, 135/622, 70 S. E. 237. Jury decide what questions. *Luke*, 137/159, 73 S. E. 345, 38 L. R. A. (N. S.) 559; *Walker*, 137/404, 73 S. E. 368. Jury determines credibility. *Waycaster*, 136/92, 102, 70 S. E. 883; *Purvis*, 136/852, 72 S. E. 343; *McCullough*, 134/512, 68 S. E. 89. Relevancy of statements, not for jury's decision. *Hicks*, 146/221, 91 S. E. 57. When no error in excluding testimony offered for. *Jones*, 137/21, 72 S. E. 410. Whole conversation admissible to sustain him. *Turner*, 131/761, 63 S. E. 294. By proof of contradictory statement, and sustaining by proof of good character. *Helms*, 136/799, 72 S. E. 246; *Bell*, 1 A. 36, 57 S. E. 1001. Law of. *Harris*, 1 A. 136, 57 S. E. 937; *Alexander*, 1 A. 289, 57 S. E. 996.

By proof of contradictory statements made since giving depositions, not allowed without laying foundation, though witness non-resident. *Blahely Co.*, 134/140, 67 S. E. 389.

By proof of declarations of decedent, inconsistent with his attestation of paper, or with his dying statement. *Mobley*, 134/125, 133, 67 S. E. 668, 137 Am. St. R. 213, 19 Ann. Cas. 1004.

By proof of contradictory statements, foundation for, how laid; not by ask-

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ing the witness as to statements to another than the person by whom it is proposed to prove them. *Luke*, 4 A. 538, 62 S. E. 110. May be laid by recalling the witness at any time; error in admitting testimony as to contradictory statements, without having laid foundation. *Allen*, 14 A. 403, 81 S. E. 252.

Sustaining witness by proof of prior consonant statement. *McBride*, 125/517, 54 S. E. 674; *Sweeney*, 121/293, 48 S. E. 984; *Cook*, 124/653, 53 S. E. 104. Sustaining witness after proof of contradictory statements; error in allowing proof of previous statement by him to the same effect as his testimony; harmless where the jury disregarded his testimony. *Cobb*, 11 A. 53, 59, 74 S. E. 702. By proof of general good character of witness. *Clark*, 117/254, 43 S. E. 853.

Interrogatories containing prior statement must be produced or accounted for, if lost or destroyed. *Trentham*, 118/530, 45 S. E. 421.

Declarations of employee after injury happened. *Columbus R. Co.*, 120/589, 48 S. E. 149.

By proof of contradictory testimony on former trial; what motion for new trial should show, where exclusion of such testimony is complained of. *Dorsey*, 113/568, 38 S. E. 958; *McCalman*, 121/492, 49 S. E. 609.

By contradictory written statement made out of court. *Stallins*, 140/55, 78 S. E. 421.

By previous affidavit, and by proof of contradictory statements. *Frank*, 141/245, 80 S. E. 1016.

Inaccessible witness, party to the case is not. *Crumm*, 11 A. 203, 75 S. E. 108.

One residing in another State, so considered. *Swift*, 8 A. 542, 70 S. E. 97.

When witness regarded as, so as to admit his testimony on former trial. *Robinson*, 128/255, 57 S. E. 315.

That witness is, no ground for admitting his interrogatories in former

case between same parties, as affirmative evidence. *Tillman*, 134/661, 68 S. E. 504.

When witness will be so regarded. *Robinson*, 128/256, 57 S. E. 315.

Resident of this State is not, though not residing in the county of the trial. *Brinson Ry. Co.*, 11 A. 737, 76 S. E. 76.

Witness not shown to be, under Penal Code, § 1027, by showing merely he is not in the county, and when last heard from was in the State. *Taylor*, 126/557, 55 S. E. 474.

Discretion of court as to sufficiency of showing in regard to. *Cohen*, 14 A. 170, 80 S. E. 679. Inaccessibility of witness, evidence sufficient as to. *Ga. &c. Ry. Co.*, 142/191, 82 S. E. 548; *Brown*, 142/396, 83 S. E. 98. Evidence not sufficient. *Dunaway*, 142/383, 82 S. E. 1071. Not proved by statement of counsel. *Case Threshing Machine Co.*, 23 A. 46, 97 S. E. 443.

Incompetency of witness, objection for, must specify grounds. *Wadsworth*, 134/816, 68 S. E. 649.

Inconsistent statements of witness, admissibility of evidence as to. *Stewart*, 11 A. 661, 75 S. E. 991.

Inexperience of witness in testifying, not relevant. *Dunn*, 16 A. 9, 84 S. E. 488.

Insanity, as ground for rejecting testimony. *Harris*, 17 A. 676, 87 S. E. 1090.

When not ground for excluding testimony. *Watkins*, 19 A. 234, 91 S. E. 284.

May not always render witness incompetent. How determined. *Cuesta*, 1 A. 48, 57 S. E. 983.

Interest of witness considered in passing on his credibility. *Detwiler*, 120/638, 48 S. E. 142.

Of one not a witness (prosecutor), irrelevant. *Hart*, 14 A. 364, 80 S. E. 909.

Admissibility of testimony showing, and affecting credibility. *Frank*, 141/245, 273, 80 S. E. 1016.

Interest of witness—(Continued).

Competency of interested witness, where deceased grantor's administrator is a party. *DeNieff*, 138/249, 75 S. E. 202.

Error in excluding testimony in illustration of, harmless here. *Phinazee*, 22 A. 258, 96 S. E. 342. Any fact tending to show interest or lack of interest of witness, admissible. *Ga. So. Ry.*, 1 A. 487, 57 S. E. 1042.

No disqualification, but may discredit him. *Union*, 7 A. 27, 66 S. E. 24.

Shown by efforts to suborn another witness. *Parker*, 11 A. 252, 75 S. E. 437.

Interpreter of witness speaking foreign language should be disinterested, if practicable; if otherwise, may be interested father and husband suing. *W. & A. R. Co.*, 136/46, 70 S. E. 798.

Intimacy of witness with deceased, when relevant. *Daniel*, 103/202, 29 S. E. 767.

Intimidation of witness, as reason for his leaving home; no error in allowing him to testify to. *Solomon*, 10 A. 469, 73 S. E. 623.

Judge, examination of witness by, in his discretion. Length of examination, and leading questions, when no ground for new trial. *Gillis*, 132/762, 64 S. E. 1096. Judge's questions and admonition to witness, not error. *Perdue*, 126/113, 54 S. E. 820. Judge's right to ask question of witness, how limited. *Sharpton*, 1 A. 542, 57 S. E. 929. See catchword, "Examination."

Juror, witness called who is kinsman to, and not on list furnished, not excluded. *Echols*, 101/531, 29 S. E. 14.

Knowledge, want of, on the part of a witness, shown as to what the witness testified to as a fact, verdict based on such testimony set aside. *Collins*, 119/40, 45 S. E. 718; *Eq. M. Co.*, 119/282, 46 S. E. 440.

Witness presumed to testify from his own, contrary not appearing. *Shaw*, 133/446, 66 S. E. 240.

Based on record, admissibility of tes-

timony as to. *Central of Ga. Ry. Co.*, 23 A. 396, 95 S. E. 357.

Peculiar knowledge of facts, competency of witness having. As to marriage. *Southern Ry. Co.*, 126/2, 54 S. E. 911.

Sources of, for jury in determining credit and weight of testimony. *Finch*, 147/147, 93 S. E. 89.

Leading question to witness, what is. *Sivell*, 115/667, 42 S. E. 151.

Allowance of, discretionary with judge. *Grusin*, 10 A. 152, 75 S. E. 350; *Colley*, 122/841, 50 S. E. 917; *Cabaniss*, 8 A. 130, 68 S. E. 849; *Minchew*, 5 A. 154, 62 S. E. 716; *Caswell*, 5 A. 483, 63 S. E. 566; *Peterson*, 6 A. 491, 65 S. E. 311; *Williams*, 16 A. 697, 85 S. E. 973; *Rusk*, 117/723, 45 S. E. 42; *Holmes*, 121/241, 48 S. E. 934, 104 Am. St. R. 103; *Taylor*, 121/348, 49 S. E. 303; *Lauchheimer*, 126/261, 55 S. E. 55; *O'Dell*, 120/152, 47 S. E. 577; *Barker*, 1 A. 287, 57 S. E. 989; *Ga. R. Co.*, 113/14, 38 S. E. 336; *Wilkins*, 113/60, 38 S. E. 374, 84 Am. St. R. 204; *Phinazee*, 123/232, 51 S. E. 300.

Discretion not abused in allowing. *Castleberry*, 21 A. 69, 94 S. E. 269. To a girl in her thirteenth year, as to details of an alleged assault to rape. *Wade*, 13 A. 142, 78 S. E. 863. To prosecutrix in seduction. *Keller*, 102/507, 31 S. E. 92.

Allowance of, no cause for new trial. *Macon R. Co.*, 107/91, 33 S. E. 889; *Varn*, 142/243, 82 S. E. 641; *Roberts*, 129/605, 59 S. E. 289. Unless judge's discretion abused. *Higdon*, 140/187, 78 S. E. 767.

Allowed on direct examination, no cause for reversal. *City of Rome*, 116/738, 42 S. E. 1011.

Question here was not. *Gress Co.*, 2 A. 208, 58 S. E. 384; *King*, 114/308, 40 S. E. 262.

Question as to recognition of corner by landowners was not. *Hix*, 124/548, 52 S. E. 890.

By counsel misled or entrapped by the witness. *Nalley*, 11 A. 15, 19, 74 S. E. 567.

By judge to witness, when no ground for reversal. *Gillis*, 132/762, 64 S. E. 1096; *Cox*, 139/25, 76 S. E. 357.

Defined; exception to written interrogatory as, must be filed before commission issued. *Franks*, 111/87, 36 S. E. 314.

Error in disallowing, as leading, the question "whether or not" designated words were used. *Fountain*, 7 A. 559, 67 S. E. 218.

Exception to allowance of, not sustained where question does not appear. *Higgs*, 145/414, 89 S. E. 361.

No abuse of discretion in allowing, to a female child, as to sexual matters. *Wade*, 11 A. 413, 75 S. E. 494.

To witness for State, discretion to allow solicitor-general to propound. *Lyles*, 130/294, 60 S. E. 578. Judge's remark no error for reversal. *Ib*; *Moore*, 130/322, 60 S. E. 544.

To witness of immature years, allowance of, in discretion of the court. *McCrary*, 137/784, 74 S. E. 536.

Marriage, proof of, on trial for adultery; whether husband or wife may testify to. *Thomas*, 115/235, 41 S. E. 578.

Promise, neither party to suit for breach of, is a competent witness on the trial. *Graves*, 123/224, 51 S. E. 318.

Mother of abandoned child held competent to prove her marriage to the father, on his trial for abandonment. *Cunningham*, 13 A. 80, 78 S. E. 780.

Married state of witness, as affecting credibility. *Ga. So. Ry. Co.*, 5 A. 740, 63 S. E. 525.

Name of witness not indosed on indictment, or his not having testified before grand jury, no cause for excluding testimony. *Taylor*, 138/826, 76 S. E. 347.

Number of witnesses; two, or one and corroborating circumstances, when necessary. *Parham*, 3 A. 471, 60 S. E. 123.

Oath, child's understanding of nature of, not shown by answers here. *Miller*, 109/512, 35 S. E. 152.

Formality of administration of, what required. *McCain*, 122/842, 51 S. E. 36.

Insufficient evidence as to administration of. *Johnson*, 13 A. 589, 79 S. E. 524.

Of witness, before grand jury, materially different from prescribed form, ground for quashing indictment or presentment. *Switzer*, 7 A. 7, 65 S. E. 1079. Oath "to best of affiant's knowledge and belief," effect of. *Davis*, 7 A. 680, 67 S. E. 839.

Omitted before testifying, objection waived by delay; no error in allowing witness recalled, to testify under oath; his sworn statement, that what he said before was true, sufficient in absence of objection. *Southern Ry. Co.*, 123/614, 51 S. E. 594.

Taking of, when shown by other evidence than affidavit. *Beach*, 106/75, 31 S. E. 806.

Taken by bailiff of grand jury, proved by juror. *Zeigler*, 2 A. 632, 58 S. E. 1066.

To best of affiant's knowledge, information, and belief; no verification, when. *Central Ry. Co.*, 15 A. 294, 300, 82 S. E. 942.

What suffices for administration of; no exact formula prescribed by law. *Britt*, 130/77, 60 S. E. 180.

Party introducing may contradict witness. *Christian*, 120/317, 47 S. E. 923; *Turner*, 120/483, 48 S. E. 176; *Moultrie Co.*, 120/730, 48 S. E. 143. Opposite party, effect of calling, as witness. *Lauchheimer*, 126/261, 55 S. E. 55.

Perjury, as ground for setting aside verdict. *Gant*, 115/205, 41 S. E. 698; *Hinsman*, 14 A. 483, 81 S. E. 367; *Snow*, 14 A. 489, 81 S. E. 363.

Corroboration as to. *Davis*, 7 A. 686, 67 S. E. 839.

Of witness, not cause for new trial, when. *Hayes*, 16 A. 334, 85 S. E. 253; *Morgan*, 16 A. 559, 85 S. E. 827; *Wilson*, 15 A. 632, 84 S. E. 81; *Smarr*, 21 A. 813, 95 S. E. 306.

Physician not privileged to refuse to testify because not compensated. *Dixon*, 12 A. 17, 76 S. E. 794.

Policeman's interest as witness not shown by what he received as extra compensation for services in other cases. *Seaboard Air-Line Ry.*, 23 A. 74, 97 S. E. 549.

Preliminary question of competency, decided by the court. *Central Georgia Power Co.*, 139/1, 76 S. E. 387, Ann. Cas. 1914A, 880.

Processioner's competency as witness; no impeachment of his finding. *Garrett*, 134/443, 67 S. E. 1036.

Recalling witness, discretion as to, not abused. *Jones*, 23 A. 726, 99 S. E. 388.

Recollection of witness "very indistinct;" weight of testimony was for jury. *Brooks*, 19 A. 6, 7, 90 S. E. 989.

May be refreshed from writing of another. *Shrouder*, 121/615, 49 S. E. 702.

Not shown to depend on writing. *Pitts*, 15 A. 436, 83 S. E. 673.

Test of, on cross-examination. *Atlanta R. Co.*, 122/101, 49 S. E. 818.

May be stated by the expression, "I think." *Dublin R. Co.*, 2 A. 749, 59 S. E. 10.

Refreshed by books of account. *Burns*, 14 A. 244, 80 S. E. 676. From account books not in court. *Johnson*, 125/243, 54 S. E. 184. By memorandum. *Roger-McRorie Co.*, 13 A. 495, 79 S. E. 374; *Weldon*, 21 A. 332, 94 S. E. 326. By plat. *Smith*, 22 A. 511, 96 S. E. 334. By book entries. *Jarrell*, 23 A. 717, 99 S. E. 386. From books, etc., not render testimony inadmissible. *Arnold*, 4 A. 57, 60 S. E. 815. By document; testimony admitted as based on such recollection, and not objectionable as stating contents of document. *Albany Phosphate Co.*, 4 A. 782, 62 S. E. 533.

Uncertain as to words used, no ground for excluding testimony as to what was said. *Holcombe*, 5 A. 48, 54, 62 S. E. 647.

Uncertain, not prevent acceptance of testimony. *Pendergrast*, 6 A. 48, 64 S. E. 282.

Witness allowed to state circumstances impressing upon his mind facts to which he testified. *Miliken*, 8 A. 480, 69 S. E. 915.

Refusal of witness to communicate knowledge to counsel without being introduced, no reason for setting aside verdict. *Harper*, 131/772, 63 S. E. 339.

To testify or to make affidavit, how testimony procured. *Thompson*, 138/267, 271, 75 S. E. 357.

Religious belief, or unbelief, does not disqualify. *Gantz*, 18 A. 154, 156, 88 S. E. 993.

Reluctance of witness as to delicate matter, no error in judge's direction as to. *Jones*, 138/136, 74 S. E. 1001

Reprimand witness for improper statement, omission of court to, when no cause for new trial. *Jackson*, 135/684, 70 S. E. 245.

Sequestration of witnesses, discretion to receive testimony from one who has violated rule as to. *Whigby*, 135/584, 69 S. E. 1114.

Discretion of court to except sheriff from the rule. *Askew*, 3 A. 79, 59 S. E. 311.

Witness violating rule as to, not rendered incompetent. *Withrow*, 136/337, 338, 71 S. E. 139; *Davis*, 120/843, 48 S. E. 305.

Solicitor-general, not privileged from testifying as to oath administered to witness before grand jury. *Switzer*, 7 A. 7, 65 S. E. 1079.

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Whisky, unlawful sale of, by witness, irrelevant on trial for homicide. *Carter*, 2 A. 255, 58 S. E. 532.

Wife not incompetent to testify on trial of another than husband, charged with same offense. *Fuller*, 109/809, 35 S. E. 298.

Testimony of, as to conversation with husband, excluded. *Toole*, 107/478, 33 S. E. 686.

Incompetency of, to testify on trial of husband, and husband's incompetency in wife's case; history of legislation; exception to rule where offense is against wife's person; no exception in favor of husband. *Ector*, 10 A. 777, 74 S. E. 295.

Statement of, in husband's presence may be proved on his trial for crime, when. *Dunham*, 8 A. 668, 70 S. E. 111.

Statements by, in presence of husband, that he had just beaten her, evidence as to, when admitted on trial of husband for wife-beating. *Joiner*, 119/315, 46 S. E. 412.

Debt of, or debt of husband in issue, he could testify that he was the debtor. *Rountree*, 139/290, 77 S. E. 23.

EXAMINATION. See *Criminal Law*; *Damages*; *Evidence*; *Witness*.

EXCAVATION. See *Negligence*.

EXCEPTIONS. See *Amendments*; *Auditors*; *Certiorari*; *Charge to Jury*; *Criminal Law*, catchword, "Indictment;" *Deeds*; *Evidence*; *Insurance*; *Judgments*; *Limitation of Actions*; *New Trials*; *Practice in Courts of Review*; *Statutes*.

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Levy excessive. See *Richards*, 138/690, 76 S. E. 64. *Hunt*, 140/157, 78 S. E. 805.

EXCITEMENT. See *Evidence*; *Negligence*.

EXCLUSIVE PRIVILEGES. See *Contracts*; *Railroads*.

EXCURSION TICKET. See *Railroads*.

EXECUTION, PROOF OF. See *Bills and Notes*; *Contracts*; *Deeds*; *Evidence*; *Wills*.

EXECUTIONS.

See *Claims*; *Contracts*; *Costs*; *Injunctions*; *Judgments*; *Levy and Sale*; *Lost Papers*; *Money-Rule*; *Municipal Corporations*; *Payment*; *Taxes*.

1. Generally.
2. Illegality of Executions.

1. GENERALLY.

Abolishment of court as affecting issuance of, where cases are transferred. *Martin*, 126/780, 55 S. E. 962.

Action for damages against justice of peace and constable for illegal issuance and levy of, upheld against demurrer. *Hathaway*, 117/946, 43 S. E. 984.

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Agreement with defendant to pay off execution, as part of purchase-price of land; error in charge of court in suit of purchaser failing to pay. *Brannen*, 19 A. 518, 91 S. E. 913.

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Tax execution inadmissible as established copy to support sheriff's sale made under original execution. *Carr*, 108/757, 33 S. E. 190.

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Irregularity curable by. *Ward*, 143/167, 84 S. E. 480.

By inserting name of plaintiff where none named, proper, and not cause levy to fail. Discretion of court as to suspension of trial to allow. *Smith*, 107/800, 33 S. E. 684, 73 Am. St. R. 151.

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Of chattel mortgage *fi. fa.*, and of transfer thereof, when allowed. *Ragan*, 4 A. 421, 61 S. E. 862.

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Of proceeds of sale, to tax *fi. fas.*, whether proper here. *Brockhan*, 128/819, 822, 58 S. E. 468.

Assignment of execution as security, vested legal title in assignee; assignor paying the secured debt and not taking written transfer back had equitable title; amendment substituting assignee as plaintiff for use of assignor allowable in money-rule proceeding. *Madison Supply Co.*, 20 A. 471, 98 S. E. 117.

Attorney's fee, right to have execution proceed for, after settlement between parties to the cause. *Screws*, 124/361, 52 S. E. 429.

Backing of execution by justice of the peace, unauthorized levy before. *Aldridge*, 136/593, 594, 71 S. E. 891.

Not necessary, to authorize garnishment in another county. *A. & W. P. R. Co.*, 6 A. 405, 65 S. E. 165.

Of execution from justice's court, required to be levied in county where not issued, is indorsement by justice of the latter county of his official signature on it. *Dickson*, 113/93, 38 S. E. 319. What sufficient. *Wilcher*, 121/305, 48 S. E. 956.

Bankrupt discharged, entitled to stay of execution, founded on judgment rendered before the discharge. *Strickland*, 19 A. 73, 90 S. E. 1039.

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Certified copy, admissibility of, as evidence. *Cannon*, 136/167, 71 S. E. 142, Ann. Cas. 1912C, 39.

City court of Atlanta, execution from, not open to objections raised as to direction, signature etc. *Young*, 132/490, 64 S. E. 552.

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May attack, for what cause. *McCrary*, 104/668, 30 S. E. 881.

Clerk of court not liable for failure to issue execution, without direction from plaintiff or his counsel. *Broyles*, 19 A. 294, 91 S. E. 437.

Contribution among codefendants; enforcement of, in favor of defendant; defenses available to codefendant. Settlement by one defendant with plaintiff for less than due inures to benefit of codefendants. *Miller*, 128/465, 57 S. E. 787.

By purchasers of several parcels of land subject to; rule in C. C. § 6029. *Brewer*, 144/548, 87 S. E. 657.

Enforcement for, by promisors who paid, against others, where all had acted as partners. *Wallace*, 138/30, 74 S. E. 756.

Law as to control of *fi. fa.*, by codefendant paying, applies to execution against partners, when. *Higdon*, 10 A. 376, 73 S. E. 528.

Not enforced for, where defendants who paid accepted note of joint defendant for his part. *Babb*, 141/792, 82 S. E. 249.

Right of transferee to. *Borders*, 134/85, 67 S. E. 543. How exercised. *Warthen*, 132/113, 116, 63 S. E. 832, 131 Am. St. R. 184.

Control and direction of execution by plaintiff or his attorney. Effect of officer's insisting on levy, to collect his costs. *Lancaster*, 136/405, 71 S. E. 731, Ann. Cas. 1912C, 342.

Copy exemplified, from comptroller-general's office, of lost tax *fi. fa.*, when need not be introduced, to show con-

tents of original. **Hilton**, 107/821, 33 S. E. 715.

Coroner, what necessary to authorize execution of process by, in lieu of sheriff. **Baldwin**, 103/96, 29 S. E. 601.

Costs, fi. fa. for, not enforced as against holder of security deed older than judgment, without tender of payment of his debt. **Jordan**, 108/495, 34 S. E. 132.

Counter-affidavit, made before one who was the affiant's attorney in the proceeding, void, and not amendable. **Moultrie Lumber Co.**, 121/721, 49 S. E. 678.

County, valid process issued by the commissioners in name and behalf of. **Mason**, 104/35, 30 S. E. 513.

Execution to be issued in name of, against defaulting treasurer. If in name of ordinary for use, defect amendable. **Roberts**, 144/341, 87 S. E. 287.

Treasurer defaulting, power of ordinary or commissioners to issue execution against. **Roberts**, 144/341, 87 S. E. 287.

Commissioners not all concurring in order for issuance of execution, as ground of illegality. **Roberts**, 144/341, 87 S. E. 287. Execution by clerk not void because not signed by commissioners. **Roberts**, 144/341, 87 S. E. 287.

Commissioners of Glynn, authorized to issue execution against estate of deceased defaulting treasurer. **Lamb**, 108/602, 34 S. E. 160.

Validity of execution summarily issued against any person holding county funds, without notice or hearing. **Greer**, 138/558, 75 S. E. 578.

Death of party, not prevent enforcement of fi. fa., nor entries to keep it alive, though there be no legal representative. **Hatcher**, 115/619, 41 S. E. 1007, 61 L. R. A. 353. In claim case representative must be party. *Id*

Decedent, executions against, and against her estate, were void. **Ayer**, 146/608, 91 S. E. 548.

Decree on report of master in chancery did not authorize issuance of. **Coogle**, 141/199, 80 S. E. 481.

On verdict here did not authorize issuance of execution for money, though costs included. **Torbert**, 141/700, 81 S. E. 1103.

Deposit of lien, as basis of money rule. **Horrigan**, 126/127, 54 S. E. 961.

Descriptive words (trustees of a church) after names of defendants in, surplusage. **Jones**, 110/259, 34 S. E. 330. "Agent for," descriptio personæ. Execution against one so described is against him. **Armour Co.**, 118/164, 44 S. E. 990; **State**, 111/701, 36 S. E. 922. A "as agent for" **B. Wynn**, 109/287, 34 S. E. 582. A, "agent for" **B**, execution in favor of, treated as in favor of **A** personally, and not in favor of **B**. **Mullins**, 20 A. 138, 92 S. E. 763. A, "executor etc.," party to; when the words quoted should be treated as merely descriptio personæ, and when not. **Griffin**, 115/617, 41 S. E. 1003.

Direction, verbal variance in, from statutory form, when no cause to dismiss levy. **Young**, 132/490, 64 S. E. 552.

Discharge of all joint defendants in execution, by acceptance of money, by plaintiff or transferee and release of one defendant who pays. **Warthen**, 132/113, 63 S. E. 832, 131 Am. St. R. 184. No discharge on payment by and transfer to other than defendant. **Glover**, 132/796, 65 S. E. 64.

Of all defendants did not result by receiving part payment from one under agreement by sheriff to relieve him from liability, not authorized or ratified by plaintiff. **Swicord**, 23 A. 297, 97 S. E. 891.

Distress warrant is, on dismissal of counter-affidavit. **Haines**, 1 A. 480, 58 S. E. 220.

Distribution of funds on money rule; postponement of landlord's lien to common-law fi. fas. **Lathem**, 145/224, 88 S. E. 941.

Docket, entry of execution from judgment on, unnecessary to its priority over unrecorded mortgage. **Cambridge Co.**, 137/281, 73 S. E. 492.

Docket—(Continued).

Entry on, not made, claimant must show purchase in good faith without notice. **Eason**, 108/109, 33 S. E. 873.

Law as to mode of keeping, substantially complied with. **Merrick**, 14 A. 81, 80 S. E. 343. Execution entered improperly or not properly indexed; entry was notice; remedy of person misled thereby was against clerk. *Ib.*

Lien of judgment, relatively to purchaser from defendant pending appeal, not affected by failure to have fi. fa. issued and entered in ten days from date of judgment. **Crosby**, 109/452, 34 S. E. 606.

Omission from, effect of, as to purchaser pending claim. **Moody**, 103/452, 30 S. E. 258.

Entry on general execution docket, not necessary to prevent dormancy of judgment rendered in 1876. **Dozier**, 113/585, 39 S. E. 106.

When surety discharged by omission to enter execution upon, in ten days. **Williams**, 134/340, 67 S. E. 821.

Statutes prescribing dockets for record of transfers, considered. **Funkhouser**, 110/766, 36 S. E. 57.

What entries necessary, to arrest dormancy of judgment. **Oliver**, 131/183, 62 S. E. 73.

Dormancy, entry altered as to date; evidence conflicting; issue for jury. **Richardson**, 112/520, 37 S. E. 736.

Entry apparently on Sunday explained by constable's testimony that he made mistake in day of the month. **Bray**, 112/364, 37 S. E. 370.

Not arrested by homestead exemption. **McLendon**, 128/530, 57 S. E. 886.

Not prevented by coroner's entry on, when. **Baldwin**, 103/96, 29 S. E. 601.

Not prevented by entries not recorded on proper docket, even as between the parties. **Palmer**, 126/519, 55 S. E. 229.

Not prevented by entry not recorded on execution docket of the

court whence execution issued. **Nowell**, 116/386, 42 S. E. 719.

Not prevented by entry on general execution docket. **Craven**, 140/651, 79 S. E. 568.

Not prevented by receipts of payments entered on, by plaintiff. **Blue**, 109/341, 34 S. E. 598.

Not prevented by sheriff's entry on county-court docket; entry by judge proper. **Dunlap Hardware Co.**, 2 A. 63, 58 S. E. 398.

Not prevented by entries on this execution. **Rountree**, 124/395, 52 S. E. 325.

Not prevented by entry on general execution docket, nor by levies in this case. **Aldridge**, 136/593, 71 S. E. 891.

Prevented by active and bona fide efforts to enforce. Entries on execution and docket, what sufficient. **Hollis**, 114/740, 40 S. E. 751; **Craven**, 140/652, 79 S. E. 568.

Of justice's court judgment, not prevented by entry not recorded on execution docket of superior court of county where defendant resides. **Smith**, 117/822, 45 S. E. 59.

Of execution, though on judgment purporting to create special lien in divorce suit. **Landis**, 146/606, 91 S. E. 688.

Of judgment, shown on face of execution, levy and sale a trespass. **Harris**, 143/497, 85 S. E. 742.

Prevented by what entry. **Raines**, 138/790, 76 S. E. 51.

When not prevented by pendency of litigation. **Beck**, 113/275, 38 S. E. 754.

Execution of justice's court was not dormant, though entries by officer preceded endorsement and levy in other county. **Virden**, 147/14, 92 S. E. 647.

Equitable petition to subject property to dormant judgment. **Palmer**, 126/521, 55 S. E. 229.

Officer has no authority to levy fi. fa. issued on dormant judgment. **Blue**, 109/341, 34 S. E. 598.

Judgment revived is a lien only from date of revival. **McLendon**, 128/526, 57 S. E. 886.

Sale under dormant execution, void. *Davis*, 108/117, 33 S. E. 852, 75 Am. St. R. 33. Such sale no obstacle to sale on same day, under valid execution. *Conley*, 109/641, 35 S. E. 92, 77 Am. St. R. 398.

Entry on docket of county where rendered, in ten days suffices. Removal of defendant not require entry in other county. *Smith*, 101/771, 29 S. E. 31.

On docket of court, by judge, of entries on execution, how to be made and dated. *Dunlap Hardware Co.*, 2 A. 63, 58 S. E. 398.

On general execution docket, need of, in ten days, to prevent loss of lien. *State Bank, of Rome*, 148/198, 96 S. E. 225.

On general execution docket, not required between parties to the judgment. *Ray*, 147/265, 93 S. E. 418.

On execution, in name of levying officer in his absence, invalid, though made at his request. *Weaver*, 103/88, 29 S. E. 594.

On execution, did not have to be put on docket, to prevent dormancy of judgment rendered in 1877. *Weaver*, 131/510, 62 S. E. 813.

Equity interference with, denied where remedy lies by claim or affidavit of illegality. *Smith*, 140/80, 78 S. E. 423. See *Gaulden*, 140/800, 79 S. E. 1125.

Estoppel, facts raising against attack on sale on account of no proper backing of justice's court *fi. fa.* *Crump*, 140/318, 78 S. E. 1066.

Not raised from laches in non-enforcement of mortgage-foreclosure execution. *Redding*, 144/100, 86 S. E. 241.

Evidence in sheriff's suit against defaulting bidder; necessary to introduce *fi. fa.*, but admissible without entry of sale. *Adams*, 11 A. 793, 795, 76 S. E. 161.

Introduction of execution and entries as in claim or illegality case, not necessary. *Manley*, 128/347, 57 S. E. 705; *Miller*, 128/467, 57 S. E. 787.

Failure to issue, not raise presumption of

discharge of judgment, when. *Central Ry. Co.*, 15 A. 293, 82 S. E.

Final process, where no statutory provision converting into mesne process. *Gaulden*, 140/801, 79 S. E. 1125.

Follow judgment, execution should. Misstatement of date, when does not avoid. *Ward*, 143/164, 84 S. E. 480.

That execution does not, variance not being specified, no ground to dismiss levy. *Young*, 132/490, 64 S. E. 552.

Forged; Civil Code, § 4210, as to special issue of forgery, inapplicable to *fi. fa.* and entry thereon, offered in connection with sheriff's deed attacked as forgery. *Vickers*, 128/794, 58 S. E. 44.

Functus officio; satisfied by sale of part of lands levied on. *Richards*, 138/696, 76 S. E. 64.

General as well as special, *fi. fa.* was, and levy on other property than that specifically described in the *fi. fa.* was good. *James*, 129/860, 60 S. E. 182. General judgment not recorded but in office, execution for amounts therein named held issued thereon, and not on special judgment which was recorded. *Fisher*, 114/648, 40 S. E. 700.

Going behind judgment to attack, when not allowable to defendant or claimant. *Haynes*, 146/832, 92 S. E. 648.

Inclusion in second execution of amount covered by first one did not vitiate the process. *Raines*, 138/792, 76 S. E. 51.

Injunction against enforcement of. *Robinson*, 134/654, 68 S. E. 582.

As to excess of interest. *Byne*, 148/144, 95 S. E. 971.

Not granted where remedy at law adequate. *C., H. & D. R. Co.*, 111/818, 35 S. E. 640.

When not granted. *Park*, 128/119, 57 S. E. 229; *Roney*, 128/250, 57 S. E. 503; *Collier*, 128/442, 57 S. E. 691; *Cohen*, 137/551, 73 S. E. 749. Not granted for error in judgment affirmed on writ of error. *Buck*, 139/599, 77 S. E. 809.

Not granted, where affidavit of illegality would lie. *Williams*, 143/740, 85 S. E. 868.

In rem, leviable on entire specific property, though value greatly exceed amount of execution. *Cooney*, 136/119, 70 S. E. 950.

Irregularity in, amendable. *Raines*, 138/790, 76 S. E. 51.

When no protection to sheriff against rule. *Horrigan*, 126/127, 54 S. E. 961.
Issued before motion for new trial was overruled; no ground for affidavit of illegality. *Hancock*, 19 A. 185, 91 S. E. 246.

By clerk of county commissioners and not signed by them, conforming to their order, not void. Sufficiently full and explicit, though no demand recited. *Lamb*, 108/602, 34 S. E. 160.

Judgment, failure to follow, in one technical respect, when no cause to exclude from evidence. *Norton*, 148/652, 98 S. E. 76.

General on face, but void for want of notice to defendant, no basis for sale under execution. *Richards*, 138/695, 76 S. E. 64.

Unlawful, execution void. *Parks*, 137/578, 73 S. E. 839.

Justice's court execution need not show on its face all proceedings necessary to give the court jurisdiction. *Fulton*, 11 A. 659, 75 S. E. 990; *Johnson*, 14 A. 380, 80 S. E. 909.

Execution issued in four days after judgment is mere irregularity, but is ground of affidavit of illegality. *Shepard*, 106/757, 32 S. E. 665.

Judgment entered on verdict before entry on docket, no cause to avoid execution. *Humphrey*, 143/704, 85 S. E. 930.

Sheriff not authorized to levy execution from, prior to act of 1885. *Coursey*, 141/65, 80 S. E. 462.

Justice of the peace acts ministerially in issuing; may be so compelled by mandamus. *Scott*, 108/205, 33 S. E. 903.

Levy of execution from justice's court, bailiff of county court not authorized to make. *Oliver*, 124/550, 53 S. E. 100, 4 L. R. A. (N. S.) 1020, 110 Am. St. R. 188.

Of justice's court execution; when not illegal for want of entries of no personality and of pointing out. *Hall*, 147/27, 92 S. E. 536.

Right of creditor as to, where part of property subject has been sold by debtor. *Hollinshead*, 124/721, 52 S. E. 815.

Right of defendant to point out property for. *Hollinshead*, 124/721, 52 S. E. 815.

Lien of judgment on which execution had not issued, not affected by issuance, docketing, and levy of fi. fa. of younger judgment. *Bank of LaFayette*, 20 A. 741, 93 S. E. 236.

Lost, copy established was substantially an alias. *Ward*, 143/164, 84 S. E. 480.

Parol proof of contents. *Portwood*, 18 A. 502, 89 S. E. 591.

Mandamus to require issuance of execution was erroneous. *Ga. Ry. & C. Co.*, 147/212, 93 S. E. 206.

Mesne process, execution on foreclosure of mortgage on personalty becomes, on interposition of counter-affidavit. *Waters*, 131/727, 63 S. E. 214. Mesne and final process; attachment, and execution for tax. *Baxter*, 131/124, 62 S. E. 42, 20 L. R. A. (N. S.) 268.

Mistake in paying money on, what necessary to authorize recovery. *Strange*, 126/717, 55 S. E. 943.

Mortgage, as distinguished from ordinary judgment. *Moughon*, 140/702, 703, 79 S. E. 561.

Fi. fa. not invalid for designating land as that described in mortgage to transferee. *Lee*, 138/646, 75 S. E. 1051.

Fi. fa.'s priority over other liens, in distribution of proceeds of sale. *Ragan*, 4 A. 422, 61 S. E. 862. Priority of unforeclosed mortgage. *Hughes*, 4 A. 23, 60 S. E. 809.

Foreclosure, execution on, showing want of jurisdiction, null. *DeVaughn*, 110/904, 36 S. E. 267.

Junior to execution, superior to it, if executed to secure price of supplies to aid in making crop. *Akin*, 138/733, 75 S. E. 1121.

Municipal taxes, authorized issuance of execution for. *O'Neal*, 147/420, 94 S. E. 238.

Name of plaintiff omitted, amendable. *Smith*, 107/800, 33 S. E. 684, 73 Am. St. R. 151.

Notice of issuance, want of, no ground for quashing. *Roberts*, 144/343, 87 S. E. 287.

Nulla bona entry, as part basis of equitable proceeding against corporate officers as trustees. *Tatum*, 136/792, 72 S. E. 236, Ann. Cas. 1912D, 216.

Not the only method of showing defendant's insolvency. *Harrell*, 112/711, 38 S. E. 56.

What sufficiently expressive. *Richardson*, 112/520, 37 S. E. 736.

Objections to form of; various grounds overruled. *Young*, 132/490, 64 S. E. 552.

Officer authorized to execute and return, bailiff of county court is not, as to execution from justice's court. *Oliver*, 131/183, 62 S. E. 73.

Duty of, as to making entries to keep *fi. fa.* alive. *Hatcher*, 115/623, 41 S. E. 1007, 61 L. R. A. 353.

Failure of, to execute final process, presumed to damage plaintiff to the amount of the execution; aliter as to mesne process. *Beck & Gregg Co.*, 121/287, 48 S. E. 930, 3 L. R. A. (N. S.) 420, 2 Ann. Cas. 9.

Parol evidence to connect execution with judgment. *Smith*, 107/800, 33 S. E. 684, 73 Am. St. R. 151.

Of contents of execution, when admissible. *Patterson*, 126/478, 55 S. E. 175.

Part for unauthorized tax, whole not thereby vitiated, nor sale thereunder void. *Montford*, 111/18, 36 S. E. 305.

Payment and transfer of, by one of defendants in, settles, where no entry of amount paid, under Civil Code, § 5971. *Warthen*, 132/113, 63 S. E. 832, 131 Am. St. R. 184. By other than defendant, not a discharge. *Glover*, 132/796, 65 S. E. 64.

By one of joint debtors, without defining, on record, his relation as surety, extinguishes. No right to compete afterward on money rule. *Patterson*, 101/214, 28 S. E. 623.

By third person to sheriff settled execution. Claim on money rule thereunder denied. *Hardwick*, 140/608, 79 S. E. 532.

To sheriff discharges defendant, and renders moot a question of legality of the judgment. *Hoard*, 23 A. 656, 99 S. E. 144.

Entry of, sufficient to authorize defendants to proceed for contribution, under statute. *Wallace*, 138/30, 74 S. E. 756.

Equitable accounting as to. *Jones*, 141/729, 82 S. E. 451.

In full, rendered *fi. fa.* functus officio; though less than sum bid at sale under levy. *Blalock*, 141/623, 81 S. E. 853.

To transferee of, without knowledge that he had transferred it, was at peril and subsequent loss of defendant so paying. *Parker*, 142/160, 82 S. E. 556.

Pleading, not evidence, landlord's-lien execution or distress warrant becomes, upon interposition of counter-affidavit. *Martin*, 127/705, 56 S. E. 995.

Execution and entries are part of, in claim or illegality case. *Manley*, 128/351, 57 S. E. 705; *Miller*, 128/465, 57 S. E. 787.

Presumed to follow judgment. *Jones*, 110/259, 34 S. E. 330.

Priority of execution on note for purchase-price over one on foreclosure of later mortgage. *First National Bank*, 144/857, 88 S. E. 190.

Proceeds improperly applied in part to unsecured debt. *Smith*, 105/721, 31 S. E. 754.

Not credited on, must be accounted for before other property subjected to. *Smith*, 105/721, 31 S. E. 754.

Protection to levying officer where execution apparently valid. *Horrigan*, 126/130, 54 S. E. 961.

Receiver, when appointed on petition of plaintiff in *fi. fa.* delayed by repeated

claims and affidavits of illegality of insolvents. **Smith**, 128/290, 57 S. E. 513.

Record of tax fi. fa., as evidence; explanation of mistake in. **Hilton**, 107/821, 33 S. E. 7154.

Recording entries on, necessary to prevent dormancy. **Palmer**, 126/519, 55 S. E. 229.

When necessary, to affect purchaser of property subject to. **Fudge**, 6 A. 5, 64 S. E. 316.

Registry law not complied with, bona fide purchaser not affected. **Harvey**, 107/740, 33 S. E. 713. Execution, levy, and claim not constructive notice to purchaser. **Moody**, 103/452, 30 S. E. 258.

Release of property by plaintiff in execution, not effected here. **Farmers & Co. Bank**, 20 A. 219, 92 S. E. 971.

Representative capacity of defendant, not described in; immaterial, in action on judgment, under facts here. **Solomon**, 9 A. 189, 70 S. E. 964.

Return of final process, what necessary for attack on, by parol evidence. **Hawkins**, 131/347, 62 S. E. 285.

Of nulla bona as to "defendant," in suit against administrator, construed as referring to estate represented by him. **Worthy**, 125/415, 54 S. E. 667.

Returnable to no court, no ground of demurrer to execution against tax-collector. **Read**, 145/881, 90 S. E. 60.

Sale of execution by plaintiff to defendant is satisfaction of. **Walker**, 128/831, 58 S. E. 475.

Of liquors under, where prohibition law in operation. **State**, 103/162, 29 S. E. 692.

Of property capable of division, to be so made as to discharge, with minimum loss to owner. **Cooney**, 136/119, 70 S. E. 950.

Under execution, distinguished from judicial sale. **Ousley**, 111/787, 36 S. E. 750.

Under void execution, estoppel against denying validity of, by what conduct. **Parks**, 137/578, 73 S. E. 839.

Separate paper attached to, and containing bill of costs, treated as part of execution. **Hix**, 113/83, 38 S. E. 399.

Sheriff and his sureties, equitable remedy on issuance of execution against. **Ben Hill County**, 144/326, 87 S. E. 15.

Signature of clerk imported action in official, not private capacity. **Young**, 132/490, 64 S. E. 552.

Abbreviation "T. C." sufficiently indicated that, tax fi. fa. was signed by tax-collector. **Vickers**, 128/794, 58 S. E. 44.

Of clerk not affixed by him or by his authority, fi. fa. invalid. **Williams**, 111/28, 36 S. E. 301.

Of sheriff to entry of levy, presumptions as to. **Young**, 132/490, 64 S. E. 552.

To entry of levy in marshal's name by deputy, expressly directed and adopted, valid. **Cooney**, 136/118, 70 S. E. 950.

To execution misspelled (Stoy, instead of Story) and written by another, valid where made in the officer's presence by his authority, or adopted and acted upon by him. **Vickers**, 128/794, 58 S. E. 44. Signed by deputy clerk, valid. **Cooney**, 136/118, 70 S. E. 950. Signed by deputy clerk with his own name, valid. Not so when signed by him with name of clerk in his absence and under general oral authorization. **Biggers**, 124/990, 53 S. E. 397.

Stay of execution, defective advertisement no ground for. **Ga. Northern Ry. Co.**, 17 A. 755, 88 S. E. 413; **Ga. Northern Ry. Co.**, 17 A. 755, 88 S. E. 413, 701.

Effect as between creditor and surety on original contract. **Williams**, 134/340, 67 S. E. 821.

Giving bond recognizes validity of judgment, and waives want of jurisdiction of person. **Glennville Bank**, 146/129, 90 S. E. 958.

Must be on valuable consideration, and for definite time, to relieve surety. **Luden**, 146/284, 91 S. E. 102.

Of proceedings on execution, granted by plaintiff, prevented his having rule absolute against sheriff. **Williams**, 140/859, 80 S. E. 273.

Street paving, validity of executions for. **Lanham**, 136/398, 71 S. E. 770.

Supersedeas not obtained, writ of error dismissed where property sold and fi. fa. settled. **Standard Oil Co.**, 141/121, 80 S. E. 555.

Not result from pendency of writ of error alone. **Montgomery**, 125/389, 54 S. E. 135.

Surety control of execution by. **Patterson**, 101/216, 28 S. E. 623.

Fi. fa. against principal and surety may be enforced against either, at election of creditor. **Jordan**, 5 A. 244, 62 S. E. 1024.

Not discharged by stay of execution without consideration, and for no definite time. **Luden**, 146/284, 91 S. E. 102.

Parol evidence that one of defendants in execution was, when excluded. **Warthen**, 132/113, 63 S. E. 832, 131 Am. St. R. 184.

Paying off execution, what necessary to control, so as to claim fund on money rule. **Patterson**, 101/214, 28 S. E. 623.

Tax fi. fa. against unreturned wild land, in 1888, properly issued by tax-collector. **Vickers**, 128/794, 58 S. E. 44. When unlawful for want of due advertisement. **Cannon**, 136/167, 71 S. E. 142, Ann. Cas. 1912C, 39. Invalid if return made, though unauthorized. **Shippen Lumber Co.**, 146/348, 91 S. E. 111.

Execution not directed to particular officers, directing levy on property of defendant, irregular, but not void; and amendable. **Winn**, 127/385, 56 S. E. 406.

Form of execution for, should be followed if prescribed; but irregularity may be harmless. **White**, 136/634, 71 S. E. 1073. When sufficient. **Vickers**, 128/794, 58 S. E. 44.

Execution issued in 1877 for taxes of 1874; delay raised no presumption against it. **Hilton**, 107/821, 33 S. E. 715.

Execution not stopped by affidavit of illegality. **Ga. Trad. Co.**, 114/397, 40 S. E. 250. Not transferable by sheriff to purchaser at sale under common-law execution. **Blalock**, 114/564, 40 S. E. 717. Wild land, by whom issued V. II—58

against. **Barnes**, 114/886, 40 S. E. 993.

Interest on, not run prior to issuance of fi. fa. **McWilliams**, 128/375, 57 S. E. 509.

Proof of execution, when lost. **Hilton**, 107/821, 33 S. E. 715.

Comptroller-general's execution for. **Greer**, 104/552, 30 S. E. 943. Presumption in favor of; what recitals not required. **Hilton**, 107/821, 33 S. E. 715.

Comptroller-general's execution against tax-collector failing to settle, not enforceable. **Gaulden**, 140/800, 79 S. E. 1125.

Affidavit of illegality does not lie on levy of execution against tax-collector in default. **Webb**, 138/342, 75 S. E. 106.

Liability of tax-collector to execution for county taxes. **Read**, 145/881, 90 S. E. 60.

Character of, not specified; no ground of demurrer. **Read**, 145/881, 90 S. E. 60.

Time of issuing, not too soon, where issued July, 18, 1903 on judgment rendered July 13, 1903. **Denton**, 12 A. 494, 77 S. E. 672.

Transfer by sheriff without express authority, on receiving payment, not effective. **Hardwick**, 140/608, 79 S. E. 532.

Transferee, judgment in favor of, against garnishee, subject to attack by defendant in execution, on ground of payment before garnishment, sued out. **Warthen**, 132/113, 63 S. E. 832, 131 Am. St. R. 184.

Of fi. fa. for taxes on land which transferee had bought, could not enforce it, under the facts. **Sheibley**, 107/384, 33 S. E. 398.

Of mortgage fi. fa. may foreclose mortgage in his own name as transferee, if the first foreclosure is defective. **Ragan**, 4 A. 421, 61 S. E. 862.

With knowledge of facts, in no better position than plaintiff. **Williams**, 140/859, 80 S. E. 273.

Transfer of execution must be in writing. **Jones**, 117/749, 45 S. E. 60.

Must be written, to put title in transferee and authorize him to proceed in

Transfer—(Continued).

his name. *Screws*, 124/361, 52 S. E. 429.

Not shown by parol proof. *Walton*, 11 A. 160, 74 S. E. 1006.

Of tax fl. fa. not recorded on proper docket, lien lost as to third person. *Funkhouser*, 110/766, 36 S. E. 57.

On payment by other than defendant, no settlement of execution. *Glover*, 132/796, 65 S. E. 64.

Unsigned by clerk, void. *Ray*, 147/265, 93 S. E. 418.

Estoppel against contesting validity of. *Warwick*, 137/496, 73 S. E. 738.

Void; yet defendant's conduct estopped him from setting up such invalidity. *Rawles*, 104/593, 30 S. E. 820, 69 Am. St. R. 185.

Variance from judgment. *Smith*, 107/802, 33 S. E. 684, 73 Am. St. R. 151. When disregarded as surplusage. *Hollis*, 103/75, 29 S. E. 482.

Verdict finding certain amount unauthorized by pleading, execution quashed. *Conley*, 102/752, 29 S. E. 710.

Void, execution, action for damages on account of seizure under. *Hathaway*, 117/946, 43 S. E. 984.

For uncertainty of description of mortgaged premises; attack on, in claim case. *Osborne*, 107/281, 33 S. E. 54.

2. ILLEGALITY OF EXECUTIONS.

Affidavits of illegality. *Webb*, 118/627, 45 S. E. 478; *Ward*, 118/811, 45 S. E. 688; *Williams*, 134/339, 340, 67 S. E. 821.

Alleging discharge as surety, etc., dismissed as seeking to go behind judgment. *Miller*, 135/408, 69 S. E. 55.

Alleging affiant's fraudulent conveyance, and seeking to enforce covinous contract with his grantee, properly stricken. *Glover*, 132/796, 65 S. E. 64.

By attorney in fact, competent without exhibition of written authority. *Lewis*, 137/515, 73 S. E. 739.

Defective, to require bail in trover, no ground for attack on judgment. *Knight*, 23 A. 789, 99 S. E. 634.

Insufficient, against levy of execution for special liquor tax. *Sasser*, 106/228, 33 S. E. 881.

Not sworn to, and only "witnessed" by notary, invalid and ineffective. *Howland*, 141/687, 82 S. E. 32, L. R. A. 1917B, 513.

Ordinary diligence requires ascertainment as to acceptance of. *Howland*, 141, 695, 82 S. E. 32, L. R. A. 1917B, 513.

Statutory form of, when not sufficient. *Dixon*, 20 A. 511, 519, 93 S. E. 274. That the execution "is illegal, and that the whole of the amount . . . stated in the execution is not due" when demurrable. *Ib.*

Not met by written traverse or joinder of issue, must be treated as true as to recitals of fact. This rule not applied where trial proceeds without objection to absence of such traverse or joinder. *McLeod*, 14 A. 77, 80 S. E. 207.

That deponent "is advised and believes" that the debt on which the judgment is based has been settled in full by his principal, not sufficient. *Wilkes*, 18 A. 780, 781, 90 S. E. 722.

"To the best of affiant's knowledge and belief," not sufficient. *Hancock*, 19 A. 185, 91 S. E. 246.

Agreement between plaintiff and defendant, contemporaneously with or prior to rendition of judgment, as ground of illegality. *Monroe*, 127/549, 56 S. E. 764.

Not to take judgment, violated; remedy not affidavit of illegality. *Fitzgerald Granitoid Co.*, 15 A. 174, 82 S. E. 774.

Allegation of excessive amount admits by implication that some amount is due. *Hardwick*, 140/633, 79 S. E. 553.

In affidavit, too vague, indefinite, and uncertain, stricken on demurrer. Irregular process, when not subject to attack by. Levy by sheriff of city court, when legal. *Rucker*, 126/132, 54 S. E. 959.

Vague and indefinite as to part of costs, properly stricken. *Thompson*, 139/310, 77 S. E. 166.

Demurrable; setting up parol agreements, and attacking sale on short order. *Armistead*, 140/740, 79 S. E. 783.

Amendment of affidavit of illegality. *Dixon*, 20 A. 517, 518, 523, 93 S. E. 274. Direction by appellate court, as to allowance of amendment. *Ib.*

No error in refusing to reopen case for, after judgment, where entry of service not traversed. *Field*, 143/129, 84 S. E. 553.

Of affidavit, disallowed, can not be made a part of the record. *Jones*, 136/836, 72 S. E. 337.

Merely amplifying ground of illegality, allowed, without oath as to want of knowledge at time of filing original affidavit of illegality. *Cooper Co.*, 17 A. 688, 87 S. E. 1092.

Fatally defective, in not stating that the ground added thereby was not known to the affiant when the original affidavit was made. *Ga. Northern Ry. Co.*, 17 A. 755, 88 S. E. 413; *Ga. Northern Ry. Co.*, 17 A. 786, 88 S. E. 701.

Not allowed without affidavit required by Civil Code, § 5704. *Mosley*, 102/564, 27 S. E. 667.

When not allowed. *Ray*, 107/768, 33 S. E. 692. No error in allowing. *McCook*, 9 A. 550, 71 S. E. 917.

Of grounds of affidavit; what allowable; and requirement as to verification. *Mayor &c. of Savannah*, 148/766, 98 S. E. 464.

Of execution for sidewalk improvements, by correcting minutes of council, etc., after affidavit filed. *Owens*, 144/656, 87 S. E. 913.

Of foreclosure proceeding, to cure defect pointed out by affidavit of illegality; when not too late to amend after reviewing court has rendered judgment. *Hillis*, 16 A. 653, 85 S. E. 931.

Of judgment and execution pending issue raised by affidavit of illegality, without levy falling. *Weaver*, 144/8, 85 S. E. 1048.

Of judgment on trial of illegality, when not allowable. *Nashville Ry. Co.*, 3. A. 561, 60 S. E. 319. Amendable de-

fect cured by judgment; no ground for affidavit of illegality. *Knight*, 23 A. 789, 99 S. E. 634.

Amount due, duty of defendant as to. *Brinson*, 102/802, 30 S. E. 261.

Assessment for public improvement, defenses against enforcement of, open to property-owner. *Sanders*, 141/442, 81 S. E. 215.

For paving, sufficiency of affidavit of illegality. *Dixon*, 20 A. 511, 93 S. E. 274.

For street improvement; affidavit of illegality as remedy. *City of Atlanta*, 137/805, 74 S. E. 268. See *Ga. R. &c. Co.*, 137/537, 73 S. E. 830, 40 L. R. A. (N. S.) 935; *Hall*, 147/705, 95 S. E. 248; *Burns*, 148/549, 97 S. E. 536.

See catchwords "Street-improvement."

Assignment of error on dismissal of illegality, sufficient. *Martin*, 126/780, 55 S. E. 962.

Attachment, irregularities in, no ground for attack on general judgment against defendant who acknowledged service by giving replevy bond. *Philip Carey Co.*, 19 A. 368, 91 S. E. 444.

Irregularities in, furnished no ground to arrest execution. *Askew*, 144/348, 87 S. E. 278.

Bankruptcy as ground of affidavit. *Smith*, 140/80, 78 S. E. 423.

Discharge prevents enforcement of execution on property afterward acquired. *Peterson*, 137/799, 74 S. E. 519.

Affidavit of illegality by bankrupt, properly dismissed, where based on the ground that the judgment was for a debt from which he had been discharged. *Flynn*, 18 A. 624, 90 S. E. 83.

Bond, failure of next friend to give, before instituting suit in behalf of minor, no ground of illegality. *Oxford Mills*, 127/168, 56 S. E. 298.

For delivery of property, action on; when legality of levy or officer's authority not issuable. Extent of estoppel by recital in bond. *Mullis*, 143/618, 620, 85 S. E. 845.

Not required for forthcoming of realty levied on. *Murphey*, 16 A. 472, 85 S. E. 791.

For delivery of property at time and place of sale, when surety's defenses to suit on, not sustained. *Stroud*, 116/332, 42 S. E. 496.

Burden of proof on trial. *McLeod*, 14 A. 77, 80 S. E. 207; *James*, 17 A. 578, 87 S. E. 842; *Dockins*, 6 A. 680, 65 S. E. 689; *Thompson*, 139/310, 77 S. E. 166.

Certiorari, and not affidavit of illegality, was remedy here. *Perry*, 20 A. 602, 93 S. E. 226.

Final judgment on, attacked by illegality. *Timmons*, 9 A. 713, 72 S. E. 279.

Claim, not illegality, is remedy where affiant's own property is levied on under fi. fa. against him in representative capacity. *Padgett*, 4 A. 306, 61 S. E. 293.

By third person to whom execution belonged, no ground of illegality. *Brinson*, 102/802, 30 S. E. 261.

Collateral attack not allowed by way of illegality. *Phillips*, 146/61, 90 S. E. 379.

Contribution, affidavit by defendant against whom codefendants (transferees) were seeking to enforce fi. fa., for; what necessary to be shown. *Miller*, 128/465, 57 S. E. 787.

Conveyance for purpose of levy, made by vendor to vendee of land, after judgment in favor of transferee of purchase-money note, no ground for affidavit of illegality. *Stocking*, 129/257, 58 S. E. 712.

Costs, dismissal for non-payment of. Renewal of defense after payment. *Baldwin*, 145/199, 88 S. E. 923.

In justice's court, illegality of execution for. *Payne*, 1 A. 266, 57 S. E. 916.

Illegality of execution for, based on absence of judgment, not sustained. *Connell*, 145/231, 88 S. E. 927.

Execution for, against prosecutor who abandoned before trial, issue on, by affidavit of illegality, is not a crimi-

nal case. Whether such affidavit lies to raise this issue, not decided. *State*, 112/39, 37 S. E. 174. See *Green*, 112/52, 37 S. E. 93.

County, execution held to represent real debt to, prima facie. Defendant must overcome it. *Greer*, 138/562, 75 S. E. 578.

Failure of treasurer to account for funds; burden of proof. *Mason*, 104/36, 30 S. E. 513.

Treasurer defaulting, right and ground of affidavit of illegality of execution against. *Roberts*, 144/341, 87 S. E. 287.

Damages because filed for delay only; purpose inferred where affidavit dismissed on demurrer for insufficiency. *Jordan*, 5 A. 244, 62 S. E. 1024.

For bringing up question as to illegality. *Banks*, 20 A. 97, 92 S. E. 651. "Day in court," defendant duly served had. *Fitzgerald Granitoid Co.*, 15 A. 174, 82 S. E. 774.

Allegations that defendant had not had, not sustained by facts here. *Bowers*, 17 A. 779, 88 S. E. 703.

Defendant had not, where so-called court was not a legal court. *Beddingfield*, 4 A. 206, 61 S. E. 30.

Defense available before judgment not available by affidavit of illegality, without allegation taking the case out of general rule. *Robinson*, 18 A. 525, 89 S. E. 1049.

That could have been made to the original suit, not a sufficient ground for affidavit of illegality. *Murphey*, 16 A. 472, 85 S. E. 791.

Available, on foreclosure of chattel mortgage; recoupment is; set-off is not. *Culver*, 138/60, 63, 74 S. E. 790.

Not available by illegality, that plaintiff's name did not import a legal entity, etc. *Glenn*, 127/6, 55 S. E. 1032.

What not available by demurrer or motion, though unknown when affidavit made. *Glynn County*, 148/290, 96 S. E. 566.

Definiteness, rule as to, in affidavit of illegality. *Dixon*, 20 A. 518, 93 S. E. 274.

Demurrer, that affidavit "does not allege any facts to show why the said execution is illegal, nor why the amount of the same is not due, either in whole or in part," held sufficient. *Dixon*, 20 A. 511, 523, 93 S. E. 274.

To affidavit as to chattel-mortgage foreclosure, not properly decided by reference to account and contracts attached. *Anderson*, 110/263, 34 S. E. 365.

Dismissal, not direction of verdict, where no evidence in support of affidavit. *Brown*, 141/622, 81 S. E. 901.

By magistrate, was in fact a finding (based on evidence) as to merits of affidavit. Judgment irregular, but not set aside. *Mills*, 17 A. 452, 87 S. E. 709.

Effected by ruling that the affidavit had been withdrawn at prior term. *Warren*, 111/807, 35 S. E. 674.

Of affidavit for want of evidence, error. *Howell*, 106/17, 31 S. E. 759.

Of affidavit in vacation without term order for hearing, void for want of jurisdiction. *Kelly*, 140/635, 79 S. E. 472.

Of affidavit of illegality, for want of prosecution, no adjudication on merits. *Kinney*, 14 A. 181, 80 S. E. 663.

Of affidavit affirmed, in view of recitals in bill of exceptions, etc., contradicting. *Allen*, 10 A. 169, 73 S. E. 28.

Remedy for, was certiorari, regardless of amount. *Howell*, 106/17, 31 S. E. 759; *Warren*, 111/807, 35 S. E. 674.

Disqualification of judge (kinship) no ground for illegality. *Jarrell*, 105/139, 31 S. E. 149.

Disregarded; sale under execution held illegal. *Giddens*, 127/734, 56 S. E. 1014.

Dormancy of judgment. *Benton*, 1 A. 656, 57 S. E. 1079.

Due process of law afforded by right to interpose affidavit of illegality. *Roberts*, 144/341, 87 S. E. 287.

Encumbrance by security deed not shown prior in date to that of treasurer's bond,

no cause to arrest execution. *Roberts*, 144/342, 87 S. E. 287.

Equitable relief not ordinarily obtainable, affidavit of illegality being available on levy. *Williams*, 134/339, 67 S. E. 821; *Mayor*, 124/750, 53 S. E. 183.

Estoppel by giving forthcoming bond, on filing affidavit of illegality. *Kinney*, 14 A. 180, 80 S. E. 663.

To attack judgment as void, not result from participation in trial, when. *Mills*, 20 A. 806, 93 S. E. 535.

Evidence to support affidavit should be received, where motion to dismiss overruled. *Brown*, 141/622, 81 S. E. 901.

Excessive levy, no ground for affidavit of illegality. *Ga. Northern Ry. Co.*, 17 A. 755, 786, 88 S. E. 413, 701.

No ground for illegality, when sale to be made subject to older lien, and no fact suggesting fraud or oppression. *Miller*, 108/600, 34 S. E. 169.

Execution, not in levying officer's hands, no ground of illegality. *Brinson*, 102/802, 30 S. E. 261.

Ownership of, changed, when no ground of illegality. *Brinson*, 102/802, 30 S. E. 261.

Exhibit; failure to attach copy of record of discharge in bankruptcy, no ground for dismissing affidavit. *Murphey*, 16 A. 472, 85 S. E. 791.

Foreclosure, illegal, when no affidavit of illegality lies to. *Berry*, 122/575, 50 S. E. 378.

Affidavit filed as defense to, not governed by rules as to affidavits of illegality; it is amendable to same extent as ordinary pleas. *McMichael*, 7 A. 773, 68 S. E. 322; *Benton-Shingler Co.*, 13 A. 632, 79 S. E. 755.

Form prescribed by statute for affidavit of illegality, when not sufficient. *Dixon*, 20 A. 519, 93 S. E. 274.

Fraud in procuring judgment, affidavit of illegality not the remedy. *Ray*, 107/768, 33 S. E. 692. See *Fitzgerald Granite Co.*, 15 A. 174, 82 S. E. 774.

Garnishee in default could not set up invalidity of judgment against defendant in attachment. *Warner*, 144/547, 87 S. E. 667.

Error in not sustaining affidavit of. *Nashville &c. Ry. Co.*, 3 A. 561, 60 S. E. 319.

When not allowed to attack judgment by setting up payment. *Moultrie Packing Co.*, 23 A. 44, 97 S. E. 552.
Garnishment exemption set up by surety on dissolution bond, by affidavit of illegality. *Jackson*, 18 A. 219, 89 S. E. 184.

Ground of illegality not available as motion to quash execution. *Lamb*, 108/608, 34 S. E. 160.

Seeking to go behind judgment, not good. *Duvall*, 14 A. 304, 80 S. E. 701.

On facts prior to judgment, not good. *Dooley*, 101/797, 29 S. E. 118.

Without merit. *Roynolds*, 104/703, 30 S. E. 942.

Identification of property levied on, in affidavit of illegality by reference to levy, sufficient. *Wactor*, 102/746, 29 S. E. 703.

Injunction refused where affidavit of illegality was sufficient remedy. *Rice*, 117/401, 43 S. E. 773; *Wright*, 117/405, 43 S. E. 775; *Wadley*, 140/326, 78 S. E. 912. See *Gaulden*, 140/801, 79 S. E. 1125.

Not granted where no affidavit had been tendered to levying officer. *Wade*, 145/394, 89 S. E. 407.

Lies on rejection of proper affidavit of illegality. *Wheelless*, 147/173, 93 S. E. 90.

Mandatory features of, direction to eliminate, given in affirming judgment. *Macon &c. R. Co.*, 117/555, 43 S. E. 1000.

Installment note, judgment on, by court without jury, not open to attack by affidavit of illegality. *Askew*, 144/348, 87 S. E. 278.

Issue, averment was not sufficient to raise. *VanDuzer*, 138/524, 75 S. E. 649.

Raised by illegality, when judgment concludes. *Fletcher*, 132/520, 64 S. E. 558.

Joinder of, should be written. Oral statement of counsel not sufficient. *Thompson*, 139/310, 77 S. E. 166.

Res judicata, where tried on plea to foreclosure of mortgage. *Wells*, 130/524, 61 S. E. 121.

Judgment general, not recorded, execution therefrom not illegal; nor considered as issued on special judgment which is recorded, and as void for variance in amounts. *Fisher*, 114/648, 40 S. E. 700.

Affidavit of illegality can not go behind, when defendant had his day in court. *Douglas*, 102/560, 27 S. E. 664.

Illegality did not lie, where defendant was duly served. *Southern Ry. Co.*, 103/541, 29 S. E. 761.

Illegality of execution, where issued before formal amendment of, as ordered by reviewing court. *Wheelless*, 147/173, 93 S. E. 90.

In undefended suit on account (justice's court), without proof other than affidavit, was not subject to attack by affidavit of illegality, though service was not personal. *Brown*, 121/281, 43 S. E. 917.

Not attacked by illegality as not following verdict, or because verdict not authorized by pleadings. *Bird*, 108/654, 34 S. E. 183.

Not attacked by illegality for fraud in obtaining it. *Johnson*, 108/599, 34 S. E. 158; *Fitzgerald Granitoid Co.*, 15 A. 174, 178, 82 S. E. 774.

Not open to attack by affidavit of illegality on grounds of prior motion to set aside, which was overruled. *Sikes*, 19 A. 674, 91 S. E. 1070.

Not subject to attack for purpose of setting up suretyship of defendant duly served, who had day in court. *Cunnard*, 10 A. 175, 73 S. E. 20.

Not subject to attack by one who had his day in court. *Hancock*, 19 A. 185, 91 S. E. 246.

Not void for want of jurisdiction of justice's court, affidavit did not lie. *Smith*, 124/921, 53 S. E. 457.

Rendered after due service, defendant not allowed to go behind, by affidavit of illegality. *Elliott*, 16 A. 468, 85 S. E. 679.

Void because court (justice's) not held at proper place, attacked by illegality. *Hilson*, 107/230, 83 S. E. 71, 73 Am. St. R. 119.

Void, overruling of certiorari no estoppel against affidavit of illegality. **McDonald**, 143/553, 85 S. E. 861.

Void, subject to attack by affidavit of illegality; rendered in vacation on oral announcement in term. **Lott**, 135/821, 70 S. E. 661.

Void, illegality inadequate remedy against levy of fi. fa. based on. **Park**, 128/119, 57 S. E. 229; **Roney**, 128/250, 57 S. E. 503.

Void (not rendered when justice's court was in session); affidavit of illegality sustained. **Bellinger**, 23 A. 245, 98 S. E. 119.

Void, subject to attack by illegality. Distinction between void and voidable judgments; cases collected. **Bedingfield**, 4 A. 197, 204, 61 S. E. 30.

Judicial cognizance of matters of record taken when. **Fitzgerald Granitoid Co.**, 15 A. 174, 178, 82 S. E. 774.

Jurisdiction, ground setting up want of, was not demurrable. **Askew**, 144/348, 87 S. E. 278.

Affidavit alleging magistrate rendered judgment at a place in his district where not authorized to sit, good without alleging where court ought to have been held. **Hilson**, 111/866, 36 S. E. 966.

Want of, for lack of service, etc., affirmative proof necessary. **LeMaster**, 101/762, 29 S. E. 32.

To try illegality wanting in superior court; direction by Court of Appeals that the papers be returned to justice's court having jurisdiction. **Padgett**, 4 A. 306, 308, 61 S. E. 293.

Jury not drawn and summoned for term of county court at which the case was tried by them, no ground for affidavit of illegality; the judgment was not void; remedy in such case is certiorari. **Perry**, 20 A. 602, 93 S. E. 226.

Justice's court execution levied; issue made by affidavit of illegality should be tried by that court. **Padgett**, 4 A. 306, 308, 61 S. E. 293.

Issued in four days after judgment is ground for affidavit of illegality. **Sheppard**, 106/757, 32 S. E. 665.

Levy excessive, illegality not the remedy. **Pinkston**, 106/102, 31 S. E. 808, 71 Am. St. R. 242.

Of one execution arrested by affidavit of illegality, no excuse to levying officer from proceeding with others. **Carr**, 17 A. 45, 86 S. E. 94.

Mandamus lies to compel levying officer to accept sufficient affidavit of illegality. **Williams**, 111/28, 36 S. E. 301.

When not granted. **VanDuzer**, 138/524, 75 S. E. 649.

Married woman's contention that she signed note as surety, when not available by affidavit of illegality. **Duke**, 134/594, 68 S. E. 327, 137 Am. St. R. 250.

Mortgage foreclosure on personalty; defense by affidavit of illegality, that mortgage does not cover property levied on. Dissent: remedy in equity. **Crawford**, 137/760, 765, 74 S. E. 520.

Affidavit sufficient as to rescission, though alleging failure of consideration. **Bass**, 23 A. 393, 98 S. E. 365.

Motion to dismiss levy on property as that of joint defendants, on ground that it belongs to affiant only, when not sustained. **Sigman**, 102/766, 29 S. E. 761.

Notice as to hearing need not be given to party filing affidavit returned to county court. The provision of C. C. § 4775 (kk), as to notice, is not of force. **Berry**, 121/537, 49 S. E. 607.

Officer's duty to accept affidavit. He can not decline because recitals not true. Mandamus granted. **Williams**, 111/28, 36 S. E. 301.

Not justified in receiving affidavit of illegality which court had held insufficient. **Wilkin**, 106/182, 32 S. E. 135.

When proper for officer to refuse. Defendant's remedy. **Williams**, 134/340, 67 S. E. 821.

Opening and conclusion of argument on trial, right of. **James**, 17 A. 578, 87 S. E. 842.

Partnership property levied on under judgment valid as to partner, but void as to firm; remedy was affidavit of illegality. **John Holland Gold Pen Co.**, 7 A. 173, 66 S. E. 540.

Party plaintiff, county was, on issue made by affidavit of illegality to execution issued by the commissioners. *Mason, 104/35, 30 S. E. 513.*

When heir of deceased partner not legally made party. *Juban, 104/253, 30 S. E. 779.*

Payment or tender of amount admitted to be due, and acceptance of affidavit for balance; rule of court not applied to foreclosure of mortgage on personalty. *Waters, 131/725, 63 S. E. 214.*

Of execution, insufficient allegations as to. *Brinson, 102/802, 30 S. E. 261.*

As ground of illegality to foreclosure of chattel mortgage; when judgment a bar to recovery on notes. *Stevens, 104/619, 31 S. E. 413.*

In full alleged by affidavit of illegality, and part payment proved, execution should proceed only for what is actually due. *Equitable Mortgage Co., 121/696, 49 S. E. 715.*

Of debt having been made, illegality, not injunction, was the proper remedy to prevent sale under a chattel-mortgage *fi. fa.* *Mathews, 129/103, 58 S. E. 649.*

Question became moot on payment of execution. *Hoard, 23 A. 656, 99 S. E. 144.*

Set up; affidavit should show what. *Wilkes, 18 A. 780, 781, 90 S. E. 722.*

When affidavit of illegality not a proper mode of setting up. *Moultrie Packing Co., 23 A. 44, 97 S. E. 552.*

Pleadings are in the *fi. fa.* and the affidavit. *James, 129/860, 60 S. E. 182.*

Point out property sufficient to pay debt, defendant not allowed to, no ground. *Douglas, 102/560, 27 S. E. 664.*

Premature suit, not taken advantage of by affidavit of illegality; remedy is demurrer or plea in abatement. *Cooper, 14 A. 63, 80 S. E. 217.*

Proper office of affidavit of illegality. *Monroe, 127/549, 56 S. E. 764.*

Questions, vague, indefinite, and confused grounds not sufficient to raise. *Le-Master, 101/762, 29 S. E. 32.*

Railroad realty levied on; affidavit of illegality held not subject to general

demurrer. *Bittick, 142/159, 82 S. E. 541.*

Record of original case, examination of, in passing on affidavit of illegality, not error here. *Sikes, 19 A. 674, 91 S. E. 1070.*

Remedy, for matters on face of judgment record. *Apperson, 148/159, 96 S. E. 260.*

As cause for refusing injunction. *Williams, 143/740, 85 S. E. 868.*

Available to test question whether railroad property be exempt from levy. *Harris, 144/701, 87 S. E. 1041.*

Inadequate as to execution from justice's court; injunction granted. *Morris, 144/705, 87 S. E. 1054.*

Incomplete as compared to suit in equity to set aside void judgment. *McClatchey, 144/292, 86 S. E. 1085.*

Lies only in favor of the defendant in *fi. fa.* Court has no jurisdiction where affidavit is by another, or where levy is on property of another. *State, 111/700, 36 S. E. 922.*

May, but need not, be applied to levy and sale under dormant execution. *Davis, 108/117, 33 S. E. 852, 75 Am. St. R. 33.*

Not available against judgment of court with jurisdiction of subject-matter and person, rendered after due service. *Continental Fertilizer Co., 7 A. 721, 67 S. E. 1052; Butler, 7 A. 777, 68 S. E. 331.*

Not available for correction of errors on trial, or in rendering judgment by default where defendant was duly served or voluntarily appeared and pleaded. *Arnold-Forrest Co., 9 A. 483, 71 S. E. 766.*

Not available to test whether judgment follows verdict. *Brewer, 144/180, 86 S. E. 545.* Before levy of execution. *Ben Hill County, 144/326, 87 S. E. 15.*

Of principal and sureties against judgment on bond to dissolve garnishment. *Smith, 125/83, 54 S. E. 731.*

Open only to defendant in *fi. fa.* and only when property is levied on as his. *Walker, 112/645, 37 S. E. 862;*

- Georgia Ry. &c. Co.**, 144/722, 87 S. E. 1058.
- Proper where judgment void. **Harrell**, 140/127, 78 S. E. 713.
- Where paving assessment is contested; what questions may be made. **Draper**, 126/649, 55 S. E. 929.
- Replevy bond**, obligation of. When surety not relieved by bankruptcy of principal. Burden of proof of cause of non-production of identical property. **Kaminsky**, 2 A. 332, 58 S. E. 497.
- Res judicata**; point overruled on certiorari concluded ground. **Brock**, 104/10, 30 S. E. 424.
- Return of affidavit to wrong court, effect on appeal. **Klugman**, 102/550, 27 S. E. 179.
- Revived judgment, being a nullity, successfully met by illegality. **Kinard**, 135/25, 68 S. E. 788.
- Satisfaction of execution, entry, of, when good as ground. **Jinks**, 102/694, 28 S. E. 609.
- Second affidavit not maintainable where first was based on same facts. Immaterial that the first was dismissed without trial. **Bell**, 15 A. 680, 84 S. E. 175.
- Failure to put known ground in first affidavit, not excused because affiant did not know it should be included. **Cone Export Co.**, 113/17, 38 S. E. 336.
- Questions raised by, settled by former judgment. **Harris**, 19 A. 135, 91 S. E. 211.
- When not allowed. **Dixon**, 20 A. 511, 93 S. E. 274.
- Separate trial of distinct issues raised. **LeMaster**, 101/762, 29 S. E. 32.
- Service by de facto officer; non-appearance by defendant; affidavit properly dismissed. **Warwick Co.**, 143/508, 85 S. E. 700.
- By de facto officer, not subject to attack. **Cooper**, 14 A. 63, 68, 80 S. E. 217.
- Denied in affidavit, and in traverse of entry; when error to allow defendant to testify that the entry was untrue. **Parker**, 117/813, 45 S. E. 61.
- No record of; no ground of illegality, without allegation that defendant was not in fact served or had no day in court. **Ca. Northern Ry. Co.**, 17 A. 755, 88 S. E. 413. See **Service**.
- Not made on codefendant, not sufficient ground for affidavit of illegality. **Murphey**, 16 A. 472, 85 S. E. 791.
- Traverse of officer's return, by amendment of affidavit of illegality, when not allowed. **Rawlings**, 15 A. 162, 164, 82 S. E. 803; **Turpie**, 18 A. 424, 89 S. E. 492.
- Want of, as ground for affidavit of illegality. **Crayton**, 106/853, 33 S. E. 42.
- Want of; ground sustained by evidence, and verdict contrary thereto. **Kuhnen**, 108/471, 34 S. E. 125.
- Want of; necessity of traversing official entry; and effect of unauthorized entry. **Orr**, 145/248, 88 S. E. 978.
- Want of, not set up by affidavit without traverse of entry by constable. **Field**, 143/129, 84 S. E. 553.
- Settlement and dismissal, agreement for, when not enforced in defense to sum on delivery bond. **Evans**, 140/538, 79 S. E. 116.
- Set-off by affidavit of illegality. **Brown**, 141/622, 81 S. E. 901.
- Statements in affidavit of illegality, when taken as true. **Bellinger**, 23 A. 245, 98 S. E. 119.
- Street-improvement assessments, illegality of, when not shown by grounds presented in affidavits. **Odom**, 144/96, 86 S. E. 243; **Kaplan**, 144/97, 86 S. E. 219. See catchword "Assessment."
- Sidewalk repaving, affidavit as to execution for, raised no issue for trial. **Wallace**, 140/649, 79 S. E. 554.
- Tender of amount admittedly due for, before affidavit receivable. **Hardwick**, 140/633, 79 S. E. 553.
- Surety on appeal the same as on replevy bond with counter-affidavit, no ground of illegality for surety. **Stewart**, 106/172, 32 S. E. 14.
- On forthcoming bond, attack by, on judgment entered against him as on

replevy bond. *Philman*, 103/82, 29 S. E. 598.

On trover bond was no party to the suit, and could not attack judgment against principal. *Hogan*, 146/126, 90 S. E. 863.

On county treasurer's bond, affidavit by, sustained. *Fannin County*, 23 A. 220, 98 S. E. 104.

Tax-collector and sureties, affidavit did not lie to execution against, before act of 1915 (Ga. Laws 1915, p. 55). *Perkins*, 101/291, 28 S. E. 840. See *Webb*, 138/342, 75 S. E. 106; *Gaulden*, 140/800, 79 S. E. 1125.

Could not maintain affidavit of illegality against execution, issued by comptroller-general. *Perkins*, 101/291, 28 S. E. 840.

Grounds of affidavit to exexecution against, in favor of county, not here sustained. *Read*, 145/881, 90 S. E. 60.

In default, affidavit of illegality does not lie on levy of execution against. *Webb*, 138/342, 75 S. E. 106.

Tax execution (municipal), defense against, not sufficient. *VanDuzer*, 138/524, 75 S. E. 649.

Against railroad, affidavit of illegality lies on levy of. *Webb*, 138/345, 75 S. E. 106.

Not arrested by affidavit of illegality save in cases of railroads and some municipal corporations. *Webb*, 138/345, 75 S. E. 106. See *Georgia Trading Co.*, 114/397, 40 S. E. 250.

For illegal debt of municipality; pleading inadequate to raise issue. *Southern Ry. Co.*, 143/353, 85 S. E. 123.

Not arrested by affidavit of illegality, without statutory provision. *Gaulden*, 140/801, 79 S. E. 1125.

Remedy excludes equitable interference with, in what cases. *Central of Ga. Ry. Co.*, 148/86, 95 S. E. 963.

Title to property levied on is not involved on trial of issue; what evidence irrelevant. *Harris*, 133/104, 65 S. E. 250.

Traverse, general, to affidavit of illegality, sufficient as against general demurrer. *Banks*, 20 A. 97, 92 S. E. 651.

Trial term of issue made by affidavit. *Walker*, 25 A. 22, 97 S. E. 276.

Unqualified demand no ground of; as, delivery of personal property of value greater than fi. fa. *Leavel*, 133/723, 66 S. E. 916.

Verdict erroneous, no ground of illegality. *Weaver*, 144/8, 85 S. E. 1048.

Not authorized by the pleadings, or not followed by the judgment; no ground for affidavit of illegality, where defendant was served. *Elliott*, 16 A. 468, 85 S. E. 679.

On issue made by affidavit of illegality not to be set aside without motion for new trial, and notice. *Ashley*, 8 A. 78, 68 S. E. 651.

Sustained. *Screws*, 124/361, 52 S. E. 429.

Verification of grounds must be positive. *Hancock*, 19 A. 185, 91 S. E. 246.

EXECUTORS. See *Administrators and Executors; Trusts; Wills.*

Life-tenant made executor and trustee; powers of lease and sale, as against remaindermen. *Hines*, 2 A. 675, 58 S. E. 1124.

EXEMPLIFICATION. See *Administrators and Executors; Evidence; Homestead and Exemption.*

EXEMPTIONS. See *Administrators and Executors; Arrest; Bankruptcy; Confederate Soldiers; Garnishments; Homestead and Exemption; Juries and Jurors; Service; Taxation; Year's Support.*

Burden of proof that property levied on was bought with proceeds of exemption. Evidence not sufficient. *Dawson Grocery Co.*, 137/846, 74 S. E. 796.

EXHIBITS. See *Actions; Bills and Notes; Deeds; Ejectment, catchwords "Abstract of title;" Evidence; Pleading; Practice in Courts of Review; Wills, catchword. "Copy."*

EXPENSES. See *Administrators and Executors; Damages; Principal and Agent.*

EXPENSES OF COURTS. See Constitutional Law; Counties; Taxes.

EXPERIMENT. See Evidence.

EXPERT TESTIMONY. See Evidence. Opinion of market value; witness qualified, and not so. *Flemister*, 140/511, 512, 79 S. E. 148.

Of non-expert, rule as to. *Alabama R. Co.*, 140/792, 79 S. E. 1113, Ann. Cas. 1915A, 1159.

EXPLOSION. See Evidence; Insurance; Master and Servant; Negligence.

EXPLOSIVE. See Criminal Law; Municipal Corporations; Railroads.

Left unguarded on vacant premises next to street, in city; liability for injury to person. *Wallace*, 143/236, 84 S. E. 450.

Nuisance, no cause of action as for maintaining, by storage of dynamite powder and nitroglycerine. *Simpson*, 143/465, 85 S. E. 344, L. R. A. 1915E, 430.

EXPRESS COMPANIES. See Carriers; Liquors; Railroads.

Action against, barred by terms of receipt, as to interstate shipment. *Lynch*, 18 A. 761, 90 S. E. 655.

Venue of. *Wallace*, 7 A. 565, 67 S. E. 694.

Charge for reicing fish, not recoverable where owner directed that this service be omitted. *Southern Express Co.*, 12 A. 447, 78 S. E. 197.

C. O. D. intended by shipper, but plain shipment made; plea of immoral consideration for debt thereby sought to be collected; judgment for defendant. *Widgeon*, 118/841, 45 S. E. 679.

Contract for shipment; effect of stipulation as to value. *Adams Express Co.*, 11 A. 448, 75 S. E. 673; *L. & N. R. Co.*, 11 A. 465, 75 S. E. 677.

In receipt accepted by shipper, limiting liability, binding, as to interstate shipment. *Lynch*, 18 A. 761, 90 S. E. 655.

With shipper, excluding liability for negligence of another completing the transportation. *Midville &c. R. Co.*, 117/330, 43 S. E. 717.

County of principal office; judicial cognizance that principal office of *Southern Express Co.* is in Richmond county. *Wallace*, 7 A. 565, 67 S. E. 694.

Decay of perishable freight; when carrier may discharge or destroy it. *Southern Express Co.*, 12 A. 447, 78 S. E. 197.

Delivery of package, evidence insufficient as to; agent's declarations inadmissible here. *Southern Express Co.*, 13 A. 175, 78 S. E. 1111.

To railroad conductor, to whom consignee had directed that all matter consigned to him be delivered, was delivery to consignee. Consignee and railroad company were liable to consignor where delivery to imposter was afterwards made by railroad company's agent. *Bruhl*, 113/1102, 39 S. E. 481.

Directions of consignee, as affecting liability of carrier. *Southern Express Co.*, 12 A. 447, 78 S. E. 197.

Fraud on, by non-disclosure of value. *Southern Express Co.*, 5 A. 689, 63 S. E. 809; *High Co.*, 5 A. 863, 63 S. E. 1125. Not shown by evidence here. *Fine*, 10 A. 165, 73 S. E. 35.

Iceing to preserve shipment, carrier's right to charge for. *Southern Express Co.*, 12 A. 447, 78 S. E. 197.

Interstate-commerce law, as affecting contract. *Adams Express Co.*, 11 A. 448, 75 S. E. 673; *L. & N. R. Co.*, 11 A. 465, 75 S. E. 677.

Interstate shipment, contract as to, governed by decisions of Federal courts. *Lynch*, 18 A. 761, 90 S. E. 655; *Southern Express Co.*, 20 A. 467, 93 S. E. 109.

Violation of law as to, by device to obtain rate less than lawful rate. *Southern Express Co.*, 5 A. 694, 63 S. E. 809.

"Jewelry;" term not held applicable to contents of express package here. *Fine*, 10 A. 165, 167, 73 S. E. 35.

Jurisdiction of suits against, under general law (Civil Code, § 2385), not affected by provisions of charter as to venue. *Southern Express Co.*, 126/472, 55 S. E. 254.

Libel by agent. *Wallace*, 7 A. 565, 67 S. E. 694.

Limitation of liability. *Adams Express Co.*, 11 A. 448, 75 S. E. 673; *L. & N. R. Co.*, 11 A. 465, 75 S. E. 677.

Of time for suit against, terms of receipt binding as to, in case of interstate shipment. *Lynch*, 18 A. 761, 90 S. E. 655; *Southern Express Co.*, 20 A. 467, 93 S. E. 109.

See *Southern Express Co.*, 134/445, 67 S. E. 944, 137 Am. St. R. 227; *Adams Express Co.*, 138/443, 455, 75 S. E. 596, 601, Ann. Cas. 1913D, 976.

Mandamus to compel receipt of goods does not lie against domestic company without county of its domicile. *Sprinkle Distilling Co.*, 141/21, 80 S. E. 288.

Money orders of; stubs admitted as secondary evidence, when. *Gary*, 7 A. 501, 67 S. E. 207.

Receipt of, as to contract. *Lynch*, 18 A. 761, 90 S. E. 655.

Suits against; and service; statutes cited. *Sprinkle Distilling Co.*, 141/21, 80 S. E. 288.

Value, non-disclosure of, by shipper. *Fine*, 10 A. 165, 167, 73 S. E. 35.

Not disclosed by shipper and not apparent from casual inspection of package of large value, carrier discharged from all liability. *Southern Express Co.*, 5 A. 690, 63 S. E. 809.

Not noted on package in interstate shipment; liability in case of loss. *Southern Express Co.*, 17 A. 657, 87 S. E. 1090.

Waiver of stipulation as to time for suit, not shown by conduct here. *Lynch*, 18 A. 761, 90 S. E. 655.

EXPULSION. See *Railroads*; *Schools*.

EXTENSION. See *Bills and Notes*; *Insurance*; *Principal and Surety*.

EXTORTION. See *Constables*; *Criminal Law*; *Duress*.

EXTRA COMPENSATION. See *Administrators and Executors*; *Partnership*.

EXTRADITION.

Crime, whether act charged constitutes, on face of papers, open to inquiry on habeas corpus. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

Discharge on habeas corpus not granted on ground that fugitive came as prisoner and not voluntarily. *Kelly*, 145/57, 88 S. E. 556.

On habeas corpus not granted to prisoner who had served sentence and was being extradited. *Hart*, 146/497, 91 S. E. 543.

Executive, power of, to investigate motive of prosecution; and as to refusal to honor requisition. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

"**Felony** or other crime," in constitution of U. S., includes what. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

Fugitive, after service of sentence in other State, can be arrested and delivered up on warrant. *Kelly*, 145/57, 88 S. E. 556.

Guilt or innocence of accused can not be inquired into by court of asylum State, on habeas corpus. *Blackwell*, 128/264, 57 S. E. 484.

Indictment, sufficiency of, must be tested by law of demanding State; presumption that it conforms thereto. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

Motive of prosecution not inquired into on habeas corpus to release person sought to be extradited. *Barranger*, 103/465, 30 S. E. 524, 68 Am. St. R. 113.

Presumption that Governor of demanding State has complied with the law. *Blackwell*, 128/264, 57 S. E. 484.

Warrant regular on its face, burden to show valid reason why it should not be executed. *Blackwell*, 128/264, 57 S. E. 484.

EXTRAORDINARY MOTION. See *Mandamus*; *New Trial*.

EXTRAORDINARY REMEDIES. See *Injunction*; *Mandamus*; *Quo Warranto*.

FACTORS. See *Liens*, catchword "Warehouseman;" *Partnership*; *Principal and Agent*; *Sales*, catchwords "Commission merchants," "Factors."

Contract limiting and defining the powers of, governs, though contrary to general rule. *Whigham*, 132/277, 63 S. E. 1115.

Lien of, on goods stored, for advances and expenses. *Whigham*, 132/277. 63 S. E. 1115.

Nature of, and how enforced. *Willingham*, 105/74, 31 S. E. 130.

Power to sell property subject to; not revoked by death of principal. *Willingham*, 105/74, 31 S. E. 130.

Warehouseman who is also factor, rights of, as to selling property stored. *Whigham*, 132/277, 63 S. E. 1115.

FAILURE OF CONSIDERATION. See *Contracts*.

FAIRMOUNT. See *Municipal Corporations*.

FALSE IMPRISONMENT. See *Actions*; *Criminal Law*; *Damages*; *Malicious Arrest and Prosecution*; *Penitentiary*.

Action for, against employer by employee arrested for larceny; facts tending to show want of probable cause. *Southern Ry. Co.*, 6 A. 43, 64 S. E. 308.

Agent's warrant and procurement of arrest of one he supposed stole principal's money in charge of agent, when no ground for action against principal. *Wikle*, 116/309, 42 S. E. 525.

Allegations stated cause of action. *Waters*, 142/133, 82 S. E. 535.

Stated no cause of action. *Waters*, 142/139, 82 S. E. 537, L. R. A. 1915A, 601, Ann. Cas. 1915D, 1248.

Arrest and detention without warrant; damages for. *Holliday*, 12 A. 780, 78 S. E. 482. When actionable, and what

recoverable. *Piedmont Hotel Co.*, 9 A. 672, 72 S. E. 51. By police officer on request of sheriff of other county, where no offense in policeman's presence, and no escape being attempted, makes case of. *Gordon*, 114/354, 40 S. E. 229.

Under attachment absolute, when no ground of action for damages. *Butler*, 140/579, 79 S. E. 456.

Burden of proof as to right to arrest. *Piedmont Hotel Co.*, 9 A. 675, 72 S. E. 51.

Causes of action, joinder of, in suit for. *Piedmont Hotel Co.*, 9 A. 672, 72 S. E. 51.

Cruel treatment of prisoner may be considered, to illustrate purpose of arrest; rule applied to one not allowed to communicate with family, when. *Piedmont Hotel Co.*, 9 A. 673, 72 S. E. 51.

Damages for. *Burrow*, 139/733, 78 S. E. 125.

Testimony affording reasonable suspicion of guilt, admissible in mitigation of. *Rogers*, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64.

When gives right to recover. *Westberry*, 136/795, 72 S. E. 233.

Defense, that debtor might have avoided arrest by his receipt for payment, not good. *Gordon*, 114/354, 40 S. E. 229.

Defined, at common law and by statute. *Westberry*, 136/795, 72 S. E. 238.

Good faith, want of, essential where arrest and imprisonment are by virtue of court order. *Butler*. 140/579, 79 S. E. 456.

Malice and want of probable cause not essential. *Westberry*, 136/795, 72 S. E. 238.

Evidence negating, admissible. *Rogers*, 139/281, 77 S. E. 28, 45 L. R. A. (N. S.) 64.

Municipal corporation not subject to suit for, under void judgment of police court. *Barlett*, 101/300, 28 S. E. 599, 44 L. R. A. 795.

Partnership not liable for, when caused by partner. *Martin*, 116/254, 42 S. E. 483.

Road commissioners in issuing warrant for arrest of defaulter, pending application for certiorari, acted in quasi-judicial capacity. *McMichael*, 108/298, 33 S. E. 968.

Officially abolished, when liable in damages for imprisoning supposed defaulter. *Varner*, 3 A. 415, 60 S. E. 216.

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Warrant for arrest, order construed as. *Butler*, 140/584, 79 S. E. 456.

FALSE PRETENSES AND REPRESENTATIONS. See *Bankruptcy*; *Criminal Law*; *Fraud*; *Insurance*; *Sales*.

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Words of masculine gender construed as including females, when. *Hightower*, 14 A. 247, 80 S. E. 684.

FENCES. See *Bailments*; *Constitutional Law*; *Criminal Law*; *Elections*; *Injunctions*; *Landlord and Tenant*; *Negligence*; *Stock Law*.

Act of 1909 (C. C. § 2044) not applied to fence erected after 1910. *Beaver*, 145/52, 88 S. E. 573.

Agreement of coterminous landowners may take fence from under operation of fence statutes, relatively to the rights of each against the other. *Collins*, 121/785, 49 S. E. 771.

Coterminous landowners may, by agreement or by prescription, assume obligation to maintain partition fence, each agreeing to keep up a designated part. *Collins*, 121/785, 49 S. E. 771.

Damages recoverable against landowner whose hogs entered adjoining lot through defective fence which he had agreed to keep in repair; expense of feeding hogs while held in pledge under agreement, recoverable here. *Collins*, 121/785, 49 S. E. 771.

Injunction to prevent continued impounding of animals. *Beaver*, 145/52, 88 S. E. 573.

Stock law not effective if legal requirements as to erection of fence not complied with. *Beaver*, 145/52, 88 S. E. 573.

Ordinary without jurisdiction to declare effective, by order. *Beaver*, 145/52, 88 S. E. 573.

FERRIES. See *Negligence*.

Defined. One using a boat to carry his employees etc., across stream, and not transporting for hire, is not operating a ferry. *Futch*, 134/313, 67 S. E. 814, 30 L. R. A. (N. S.) 462, 19 Ann. Cas. 982.

Discretion in granting franchise for, not interfered with, when. *Hudspeth*, 113/4, 38 S. E. 358, 84 Am. St. R. 201.

Exclusive privilege, not conferred by grant of right to establish. *Hudspeth*, 111/510, 36 S. E. 770.

Franchise not protect from competition. *Hudspeth*, 113/7, 38 S. E. 358, 84 Am. St. R. 201.

Injunction against establishment of public ferries, without franchise. *Hudspeth*, 111/510, 36 S. E. 770.

Against infringement of rights in ferry. *Futch*, 134/313, 67 S. E. 814, 30 L. R. A. (N. S.) 462, 19 Ann. Cas. 982.

Presumption of grant of franchise from seven years exclusive and continued possession. *Hudspeth*, 111/514, 36 S. E. 770.

Private, nature of right to, discussed. No franchise required for. Owner may collect toll from persons incidentally crossing, but can not maintain ferry for public at large. *Hudspeth*, 111/510, 36 S. E. 770.

FERTILIZERS. See *Corporations*; *Nuisances*; *Sales*, catchword "Consignment"; *Taxes*, catchword "Business."

Action for penalty against dealer in. *Williams*, 19 A. 190, 91 S. E. 222.

Act of 1901, as to manufacture and sale of, is exhaustive and supersedes former regulations not expressly preserved. *Griner*, 4 A. 232, 61 S. E. 147.

Agricultural department's practice, judicial cognizance of, taken and weight given to, in construing statute as to branding fertilizers. *Griner*, 4 A. 232, 61 S. E. 147.

Analyses guaranteed, and official, variance as defense to note for. *Montfort*, 108/12, 33 S. E. 636.

Immaterial variance between, not render sale illegal. *Spinks*, 108/614, 33 S. E. 906; *Sutherland*, 108/742, 33 S. E. 811.

Official, objections to, as evidence, not well taken. *Morgan*, 110/788, 36 S. E. 219.

Branding or tagging, evidence authorizing jury to find against plea that law was not complied with as to. *Lewis*, 18 A. 621, 90 S. E. 104.

Requirements as to, violated; note for price void. *International Agricultural Corp.*, 17 A. 649, 87 S. E. 1101.

Requirements as to, violated; remedy of purchaser; note for price not rendered entirely void. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476.

Breach of contract to deliver; damages too remote, on failure of land to produce as much as it would with the fertilizer. *Prince*, 23 A. 660, 99 S. E. 132.

Burden of proof as to whether ingredients correspond with guaranteed analysis on package. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476; *Keaton*, 13 A. 645, 79 S. E. 754.

Commercial value of ingredients, admissibility of, as evidence. *Spinks*, 108/614, 33 S. E. 906.

Consideration, failure of, as defense to note for; effect of stipulations in note. *Newell*, 18 A. 172, 88 S. E. 1009.

Contracts as to sale of, between manufacturers and selling agents, sued on. *Holleman*, 106/156, 32 S. E. 83; *Baldwin*, 106/480, 32 S. E. 591. Contract to pay for, not void because of failure of seller to pay tax of 10 cents per ton as required by law. *Fletcher*, 18 A. 139, 88 S. E. 916.

Copy of analysis, when admissible as evidence. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476.

Cottonseed meal is "commercial fertilizer," and "fertilizer material," within meaning of act of 1911. *Williams*, 19 A. 190, 91 S. E. 222.

Sufficiently branded by attaching inspection tag bearing guaranteed analysis as to quantity of ammonia or nitrogen. *Griner*, 4 A. 232, 61 S. E. 147.

Damages recovered by purchaser; judgment affirmed with direction to write off part, as purely speculative. *Savannah Chemical Co.*, 14 A. 371, 80 S. E. 858.

When recoverable by purchaser, under act of 1911. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476.

"Dealer" in fertilizer; when not applicable to merchant taking orders on manufacturer, paying price, and collecting. *Zipperer*, 7 A. 319, 66 S. E. 806.

Defective, resold with knowledge by vendee, he can not hold manufacturer liable for injury to his business, as on breach of warranty. *Cooper*, 132/529, 64 S. E. 650.

Defenses to notes for price of, not sustained. *Burkhalter*, 23 A. 29, 97 S. E. 263.

Deficiency in ingredients or value, how shown. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476; *Keaton*, 13 A. 645, 79 S. E. 754.

Delivery too late for use; defense not sustained by evidence. *Swift Fertilizer Co.*, 132/435, 64 S. E. 328.

Duty to brand, etc., is statutory. *Cooper*, 132/532, 64 S. E. 650.

Effect on crops, how soon may be determined, for jury. *Morgan*, 110/788, 36 S. E. 219.

Estoppel against defense (no benefit to crops), by renewing note after crops failed. *Montfort*, 108/12, 33 S. E. 636.

Infant engaged in farming by permission of parent, how far bound on contract for. *James*, 3 A. 568, 60 S. E. 329.

Inspection and analysis, not shown on sacks, sale void. *International Agricultural Ins. Corp.*, 17 A. 649, 87 S. E. 1101. Requirements as to. *Hillis*, 13 A. 214, 78 S. E. 1107; *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476.

Non-resident dealer, contract with, not governed by law of Georgia as to sale of, when. *Newton*, 20 A. 736, 93 S. E. 235.

Note for price of, payable to order of agent, may be sued on by him or by his principal. *Young*, 3 A. 204, 59 S. E. 717.

Failure of consideration is no defense, where the facts were known before the note was given, and where partial payment was made on the note. *Blalock*, 17 A. 579, 87 S. E. 836.

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Penalty for sale of cottonseed meal deficient in guaranteed elements, sufficient allegations in suit for. *Williams*, 19 A. 190, 91 S. E. 222.

For seller's non-compliance with law as to. *Arlington Oil & Guano Co.*, 13 A. 566, 79 S. E. 476.

Plea to suit on notes for, insufficient, as against general demurrer. *Thomason*, 8 A. 240, 68 S. E. 945.

Registration of brands; statute construed as to meaning of "dealers." *Zipperer*, 7 A. 319, 66 S. E. 806.

Requirements as to. *Gossett*, 11 A. 487, 75 S. E. 816.

Sale of, when illegal. *Arlington Oil & Guano Co.*, 13 A. 566, 79 S. E. 476; *Hillis*, 13 A. 214, 78 S. E. 1107. Sale of, illegal, and notes for price void in hands of bona fide holder, where the sacks bore no mark as to weight, brand-name, trade-mark, or guaranteed analysis, though the note recited compliance with the law as to inspection, branding, etc. *International Agri. Corp.*, 17 A. 649, 87 S. E. 1101.

Samples of, taken by seller after sale and delivery. He was estopped to set up that they were not legally taken. *Morgan*, 110/788, 36 S. E. 219.

State chemist's analysis, how proved. *Arlington Oil & Guano Co.*, 13 A. 568, 79 S. E. 476.

Tags or brands, burden of proof of absence of. *Griner*, 4 A. 232, 61 S. E. 147.

On bags, burden of proof of absence of. Proof sufficient for belief that tags had been attached. *Young*, 3 A. 204, 59 S. E. 717.

Contract of sale not void for failure to attach to separate parcels (one J dis-

senting). Effect of several statutes cited. *Planters Fertilizer Co.*, 142/153, 82 S. E. 564.

In part detached in transit, without fault of manufacturer or his agents, not render sale illegal. *Holt*, 114/666, 40 S. E. 735.

Law as to, not complied with, no recovery for price of fertilizer. *Zipperer*, 124/895, 53 S. E. 505.

Not essential to legality of sale. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476; *Hillis*, 13 A. 214, 78 S. E. 1107; *Fletcher*, 18 A. 139, 88 S. E. Ritchey, 18 A. 124, 88 S. E. 916.

Compliance with law as to tagging and branding, shown by positive evidence; evidence to contrary negative and without probative value; no error in directing verdict for seller. *Arnold*, 10 A. 12, 72 S. E. 510.

Variance of less than three per cent., in commercial value, between guarantee printed on sacks and official analysis, is immaterial. *Cooper*, 132/529, 64 S. E. 650.

Warranty in sale of, excluded by contract. *Newell*, 18 A. 172, 88 S. E. 1009.

Excluded by note for price of, but recoupment authorized by evidence as to worthlessness, admitted without objection. *Savannah Chemical Co.*, 14 A. 371, 80 S. E. 858.

Limited to compliance with law, damages thereby limited to those provided for by statute. *Arlington Oil & Guano Co.*, 13 A. 562, 79 S. E. 476. 13 A. 562, 79 S. E. 476.

FERTILIER INSPECTORS. See **Officers.**

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FILING. See **Actions; Alimony; Amendments; Appeals; Attachments; Auditors; Certiorari; Charge to Jury; Claims; Deeds, catchword "Record;" Equity; Evidence; Liens; Limitation of Actions, catchword "Time;" Mortgages; New Trials, catchwords "Brief of Evidence;" Pleading; Practice in Courts of Review catchwords "Bill of Exceptions;" Presumptions; Processioning; Records; Sales, catchword "Conditional;" Time; Words and Phrases.**

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Entry of, nunc pro tunc, by ordinary, on claim affidavit, allowable. *Beach*, 132/70, 63 S. E. 627.

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County court fines go into treasury; not to be paid by judge to officers for insolvent costs. *Overstreet*, 106/793. 32 S. E. 855.

Solicitor's costs, lien of, on fund from. *Ball*, 115/732, 42 S. E. 32.

Solicitor-general not liable to rule to compel payment of fees of former solicitor-general not his immediate predecessor, from surplus of fund after payment of other officers. *Bartlett*, 115/459, 41 S. E. 601.

Duty of, as to turning over to county treasurer funds from. *Brunson*, 115/195, 41 S. E. 699; *Bartlett*, 115/459, 41 S. E. 601.

Tax act violated, fine commuted by Governor to payment of tax and costs, cutting off the half for officers of court. *Carmichael*, 102/217, 29 S. E. 211.

Time of turning over fund to treasurer, fall term; solicitor-general not compelled before then to pay fund arising at spring term. *Brunson*, 115/195, 41 S. E. 699.

Treasurer of county, under local law, had right to receive and disburse

money. Remedy of court officers. *Johnson*, 148/656, 98 S. E. 78.

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Injury by, to property, and ordinary care to avoid. Case of threshing grain. *Mansfield*, 118/250, 45 S. E. 269.

Servant who contracted to cut cross-ties out of standing timber, was no bailee, and had no right of action for burning them. *Atlantic &c. R. Co.*, 118/809, 45 S. E. 673.

FIREARMS. See Criminal Law, catchword "Pistol," "Weapon."

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Right of, in arms of the sea, navigable waters. etc. *Prey*, 120/224, 47 S. E. 546.

To take fish under deed, was personal, not appendant to estate; not inheritable or assignable. *Mallet*, 127/761, 56 S. E. 1015.

Trespass in taking oysters, when restrained by injunction. *Prey*, 120/224, 47 S. E. 546.

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Assessment of tax value in; action by mayor and aldermen, when ultra vires. *Gelders*, 135/400, 69 S. E. 569.

Election to determine as to special school tax, not specially provided for, was void. *Burkhart*, 137/367, 73 S. E. 583.

Tax executions covering legal and illegal items restrained. *Burkhart*, 137/367, 73 S. E. 583.

Penalty for failure to pay, authorized; but not interest. *Burkhart*, 137/367, 73 S. E. 583.

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Administrator's sale of realty including ginnery; issue as to inclusion of certain machinery. *Parks*, 142/391, 83 S. E. 100.

Agreement in parol, that certain fixtures should not pass by a conveyance of the realty, whether sufficient. *Wolf*, 123/403, 51 S. E. 335.

That counters, table, etc., used in trade store-room, were not covered by mortgage of the realty, was controlling. *Richards*, 116/382, 42 S. E. 715.

Boiler and mill for sugar-cane, when fixtures. *Brigham*, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Bond given in equitable action against removal of; remedy under prayer for general relief, without suing on bond. *Armour*, 144/295, 87 S. E. 18.

Circumstances determining whether articles are. *Pendley Brick Co.*, 6 A. 114, 64 S. E. 664.

Contract terms gave no right to demolish and remove building. *Powers*, 148/308, 96 S. E. 386.

Conveyance of land includes, unless expressly excepted; parol proof not admissible to show such exception. *Lanier*, 7 A. 227, 66 S. E. 626.

Of land, without contrary agreement includes all fixtures, whether actually or constructively annexed to the realty. *Brigham*, 128/450, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Counters, tables, boxes, etc., in a storehouse, when treated as part of realty conveyed, though not attached to the

building. **Brigham**, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Used in a store, passed by a conveyance of the realty, though not attached to the building. **Wolff**, 123/400, 402, 51 S. E. 335.

Doubt as to whether article is fixture, to be solved by jury. **Pendley Brick Co.**, 6 A. 114, 64 S. E. 664.

Farm fixtures, articles constituting. **Brigham**, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Gas fixtures placed by tenant, removable by him in the absence of agreement. **Wolff**, 123/400, 51 S. E. 335.

Jurisdiction of suit for damage to. **Chapman**, 18 A. 476, 89 S. E. 590.

Landlord's recovery of damages by removal of. **Armour**, 147/639, 95 S. E. 228.

Machinery expressly reserved in sale of land, with right to remove it; agreement effective. No forfeiture of title by failure to remove it in stipulated time. **Power**, 141/429, 81 S. E. 225.

Mill for sugar-cane, when a fixture. **Lanier**, 7 A. 227, 66 S. E. 626.

Railroad tracks, as. **Ga. R. Co.**, 127/187, 56 S. E. 313, 119 Am. St. R. 327. 9 Ann. Cas. 677.

Realty, definition of. **Chapman**, 18 A. 477, 89 S. E. 590.

Refrigerating outfit, issue on right of lessee to remove. **Armour**, 144/295, 87 S. E. 18.

Relation of parties, as affecting question whether articles are removable or not. **Wolff**, 123/402, 51 S. E. 335.

Right of removal by lessee not declared, on general demurrer. **Armour**, 144/295, 87 S. E. 18.

Smokehouse, right of lessee to remove. **Armour**, 147/639, 95 S. E. 228.

Store window, not mere "trade fixture," but part of the realty. **Chapman**, 18 A. 476, 89 S. E. 590.

Tenant enjoined from removing manure and fixtures, though insolvency or irreparable damage not shown. **Brigham**, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Trade fixtures. **Chapman**, 18 A. 476, 89 S. E. 590.

When removable and when not. Rule as to grantor and grantee, different from that as to landlord and tenant. **Wolff**, 123/402, 51 S. E. 335.

Right of occupant to remove, without consent of landowner. **Mayor &c. of Gainesville**, 147/344, 94 S. E. 247; **Armour**, 147/639, 95 S. E. 228.

Vessel for watering horses, when a fixture. **Brigham**, 128/447, 57 S. E. 484, 10 L. R. A. (N. S.) 462, 11 Ann. Cas. 75.

Water-pipes laid in ground, right to remove, on discontinuing supply of water. **Mayor &c. of Gainesville**, 147/344, 94 S. E. 247.

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FLOODS. See Municipal Corporations; Railroads; Waters.

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Bridges, duty of rebuilding and repairing, whether in officer of county or of City of Rome. **Ennis**, 143/252, 84 S. E. 252, 84 S. E. 539.

Processioners legally appointed by commissioners, not ordinary. (Two JJ. dissent. **Braden**, 136/868, 72 S. E. 342.

FCETICIDE. See Criminal Law.

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FORCIBLE ENTRY AND DETAINER.

See Intruders; Jurisdiction.

Both forcible entry and forcible detainer must be proved to authorize general verdict on charge of. *Cate*, 10 A. 664, 73 S. E. 1079.

Evidence authorized verdict for defendant. *Johns*, 23 A. 790, 99 S. E. 543.

Force not shown in acts and language of one building house on boundary line here. *Cate*, 10 A. 664, 73 S. E. 1079.

In obtaining possession, not shown by what was done to hold possession. *Johns*, 23 A. 790, 99 S. E. 543.

Inadequate remedy, forcible detainer is, for owner against building contractor who abandoned work and obstructed. *Collins*, 142/709, 83 S. E. 660.

Judgment in civil proceedings, as affecting criminal proceeding. *Lewis*, 105/657, 31 S. E. 576.

Occupied dwelling-house entered during temporary absence of him entitled to possession, no cause of. *Griffin*, 116/754, 42 S. E. 1005.

Penal and civil actions, common-law definitions applied to. *Griffin*, 116/754, 42 S. E. 1005.

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Not favored. By-laws so construed as to prevent. *Starnes*, 2 A. 240, 58 S. E. 481.

Licensor of timber had no right to convert cross-ties left on the land after expiration of license. *Johnson*, 122/327, 50 S. E. 135.

Vendor of land not allowed to exact, on breach on contract by vendee. *Lytle*, 122/459, 50 S. E. 402.

FORGERY. See Banks; Bills and Notes; Criminal Law; Deeds; Evidence; Executions; Mortgages; Title; Wills.

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FORMER ACQUITTAL, CONVICTION, JEOPARDY. See Criminal Law.

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FORSYTH. See Municipal Corporations. Taxation of property within limits embraced by extension under act of 1907. *White*, 136/634, 71 S. E. 1073.

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FOX-HUNTING. See *Criminal law*, catchword "Game."

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FRATERNAL ASSOCIATIONS. See *Benefit Societies*; *Corporations*; *Criminal Law*, catchword "Embezzlement;" *Insurance*; *Liquors*.

FRAUD. See *Accord and Satisfaction*, catchword "Rescission;" *Administrators and Executors*; *Arbitration and Award*; *Bankruptcy*; *Bills and Notes*; *Criminal Law*, catchword "Embezzlement;" *Debtor and Creditor*; *Deeds*; *Elections*; *Husband and Wife*; *Insurance*; *Limitation of Actions*; *Sales*; *Title*; *Wills*; *Words and Phrases*; *Year's Support*.

Absolution not granted by law merely because no loss follows fraudulent act. Tune, 131/532, 62 S. E. 976.

Accord and satisfaction not based on, because of untrue statements, where no trick or contrivance to prevent ascertainment of legal rights. Howard, 101/139, 29 S. E. 143.

Obtained by fraud. Necessity of tender, and to whom, before suing on original cause of action. Western and Atlantic R. Co., 141/743, 82 S. E. 139.

Procured by fraud; allegations not demurrable for want of diligence, and delay in offering to rescind. Savannah &c. Ry. Co., 116/297, 42 S. E. 525.

With person mentally unable to contract, when set aside in equity. Taylor, 138/41, 74 S. E. 694.

Action construed to be for deceit. Houze, 20 A. 438, 93 S. E. 16. Not amendable so as to proceed for money had and received. Ib.

For deceit, necessary allegations in. Peeples, 18 A. 376, 89 S. E. 461.

For fraud, lies only when damage results. Harris, 144/519, 87 S. E. 661.

Prevented by fraud, insufficient allegations as to. Cheney, 125/170, 53 S. E. 1003.

Acts or conduct constituting, must be specifically alleged. Carroll, 2 A. 60, 58 S. E. 309.

Actual and constructive fraud, as relating to application for life-insurance. N. W. Ins. Co., 116/799, 43 S. E. 79. Actual, and intentional, no distinction between. Finney, 116/759, 42 S. E. 1020. Moral fraud need not accompany intent to delay creditors, to invalidate conveyance. Monroe Co., 108/457, 34 S. E. 176.

None in absence of knowledge. Dunn, 143/376, 85 S. E. 100.

Administration, fraudulent procurement of letters of; allegations not sustained. Neal, 132/400, 64 S. E. 480.

Letters of, fraudulently obtained in other State, how effective. Alabama R. Co., 139/224, 76 S. E. 1001, 43 L. R. A. (N. S.) 236, Ann. Cas. 1914D, 996.

Letters procured by false representation of applicant, how set aside. Wallace, 142/408, 83 S. E. 113.

Administrator's appointment and order for sale of land procured by, ground for direct proceeding, not for collateral attack in ejectment suit. Martin, 134/481, 482, 68 S. E. 80.

Collusion to defeat creditors of estate by selling property at sacrifice, charge of, not warranted by facts here. Jackson, 111/834, 36 S. E. 214.

Conveyance to defraud heirs, and refusal of consent to their suit, relief against. Purvis, 148/79, 95 S. E. 964.

Discharge, creditor could maintain action to set aside, as fraudulently obtained. Seagraves, 143/573, 85 S. E. 760.

Discharge obtained by fraud, no bar to suit on bond brought within three years. Pollock, 108/430, 34 S. E. 213.

Discharge procured by fraud on heirs or ordinary, as ground for collateral attack of judgment. *Knox*, 146/146, 90 S. E. 858.

Non-objection to dower judgment, knowing of security deed, no fraud or collusion. *Harris*, 137/113, 72 S. E. 947.

Procurement of appointment was not fraud under facts here. *Sharpe*, 121/800, 49 S. E. 775.

Purchase at his own sale, effect of agreement for, and of ratification. *James*, 135/675, 70 S. E. 251.

Sale at inadequate price, with corroborating evidence of fraud, set aside. *Black*, 146/692, 92 S. E. 62.

Sale for paying debts, fraudulent application for order authorizing. *Sutton*, 144/588, 87 S. E. 799.

Sale, fraud or misrepresentation as ground for relieving bidder at. *Holmes*, 140/219, 78 S. E. 903.

Sale to his son, not of itself fraudulent and void. Relationship, how considered. *Fairburn Banking Co.*, 144/31, 85 S. E. 1007.

Secret purchase at his own sale, protected, as against adult heirs, after three years from date of judgment discharging him. *Wicker*, 126/119, 54 S. E. 821.

Fraud, case for equitable relief against; allegations sufficient. *Crawford*, 139/535, 77 S. E. 826.

Advice or persuasion, without fraudulent misrepresentations, no fraud. *Sumner*, 121/9, 48 S. E. 727.

Agent or fiduciary not allowed to take benefit of contract made on behalf of his principal. *Fricker*, 124/166, 32 S. E. 65; *Forlaw*, 124/262, 52 S. E. 898.

By misrepresentations for his principal, estops his individual claim. *Crosby*, 108/126, 33 S. E. 913.

Guilty of fraud for his own benefit; when principal not charged with notice of. *Pursley*, 122/362, 50 S. E. 139.

Misrepresenting price of property he was employed to buy and resell; liability to account. *Ausley*, 145/750, 89 S. E. 1071.

Acts of, in perpetrating, admissible in evidence against principal. *Finch*, 146/687, 92 S. E. 63.

Deceitful conduct of, in sale of land, erroneous charges as to. *Brinson*, 122/8, 49 S. E. 810. Misrepresentation inducing signing of contract for purchase of goods, insufficient plea of. *Stoddard*, 122/802, 50 S. E. 915.

Fraud of, constructive fraud of principal, when. *Southern Express Co.*, 5 A. 694, 63 S. E. 809.

Fraud of, on principal, contract void because of. *Pellock*, 15 A. 1, 82 S. E. 381.

Fraud of, in behalf of one dealing with principal. *Locomotive Engineers' Asso.*, 8 A. 152, 68 S. E. 842; *Cable Co.*, 8 A. 562, 70 S. E. 70; *Loftin*, 9 A. 121, 70 S. E. 353.

Liability of, for fraud in making unauthorized contract in name of principal. *Peebles*, 18 A. 369, 376, 377, 89 S. E. 461.

Misapplication by, of money procured from principal; cause of action alleged and proved. *Brock*, 132/19, 63 S. E. 794.

Misrepresentations by, in sale of goods, rescission for, not effected by sending countermand to agent. It must be sent to principal. *Smith*, 114/698, 40 S. E. 735.

Misrepresentation by, of meaning of words in contract, effect of. *Barrier*, 104/312, 30 S. E. 840, 69 Am. St. R. 171.

Fraud of, on principal, by contract with another for secret profit to himself. *Sessions*, 113/956, 39 S. E. 325.

To sell realty, recovery in action against, for deceit practiced on principal. *Smith*, 145/406, 89 S. E. 363.

Allegations as to fraud in procuring note, sufficiency of. *Gibbs*, 17 A. 388, 87 S. E. 155; *Sloan*, 20 A. 123, 92 S. E. 893; *Hanes*, 20 A. 129, 92 S. E. 896; *Outlaw*, 20 A. 776, 93 S. E. 310. Insufficient, as to fraud in procuring note. *Thompson*, 13 A. 334, 79 S. E. 182.

As to fraud in indictment, sufficiency of. *Taylor*, 123/136, 51 S. E. 326.

As to fraud, insufficient. **Clarke, County**, 113/237, 38 S. E. 852; **Coleman**, 113/149, 38 S. E. 400. Special, not general demurrer, the proper mode of objecting to allegations as too general. **Williams**, 113/1020, 39 S. E. 471.

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That representations were fraudulent, not stated to be untrue, specially demurrable. **Mann**, 145/268, 88 S. E. 968.

Too general, as to conspiracy and collusion; sufficient in absence of proper objection. **Daniel**, 13 A. 395, 396, 79 S. E. 237.

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Setting up fraud of grantor in security deed, and praying reformation by substituting correct lot number etc., not allowed. *Venable*, 118/156, 45 S. E. 29.

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Appropriation of personal property covered by lien, moral fraud is basis of action for, by lienholder. *DeVaughn*, 103/102, 29 S. E. 613.

Arbitration and award, fraud not proved in relation to. *Murray*, 144/614, 87 S. E. 1068.

Assigned, right of action for injury from fraud can not be. *Morehead*, 136/488, 71 S. E. 798.

Assignment fraudulent; garnishment by assignor's creditors. *Jaques & Tinsley Co.*, 4 A. 581, 62 S. E. 90; *Jaques*, 131/3, 62 S. E. 82.

Of property by debtor in fraud of creditor. Dissent: fraud not presumed by law. *Tune*, 131/528, 534, 62 S. E. 976.

Associates of agent who consummated fraud, liability of, where they acted with knowledge. *Ausley*, 145/750, 89 S. E. 1071.

Attachment against fraudulent debtor; right of dismissal for illegal levy. *Smith*, 145/741, 89 S. E. 762.

Against debtor, removed under facts. *Dunlap Co.*, 101/645, 28 S. E. 974.

For fraud of members of corporation in transferring assets to new corporation formed by them, for purpose of defeating creditors. *Buckwalter*, 115/484, 41 S. E. 1010.

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On ground of fraud against debtor, who sells stock of goods in bulk without complying with statute. *Kight*, 137/493, 73 S. E. 740.

Under fraudulent debtor's act, whether barred by limitation, not an issue for trial of claim interposed. *Strickland*, 131/410, 62 S. E. 322.

Attorney's fees on contingency of recovery, allegations of fraud in obtaining. *Mann*, 145/268, 88 S. E. 968. Attorney's fraud, as to collection; allegations not sufficient to prevent bar of action. *Irvin*, 18 A. 662, 90 S. E. 359.

Badges of fraud shown by evidence. *Kelley*, 138/186, 75 S. E. 6.

Bank insolvency, presumption of fraud in. Penal liability of officer of bank. *Fordham*, 148/759, 98 S. E. 267. Presumption repelled how. Constitutionality of penal law. *Griffin*, 142/636, 83 S. E. 540, L. R. A. 1915C, 716, Ann. Cas. 1916C, 80.

Collusion by, with depositor, to mislead creditors, by keeping account in fictitious name. *Bank of Lawrenceville*, 129/582, 59 S. E. 291.

Fraudulent transfer by, issue, as to, not properly raised. *Wilk*, 19 A. 433, 91 S. E. 439.

Insolvent, gave customer's note instead of cash for check; transaction not necessarily invalid. *Thomas*, 147/437, 94 S. E. 554.

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Does not discharge judgment founded on actual (not constructive) fraud. *Moody*, 134/721, 68 S. E. 604, 20 Ann. Cas. 301.

Discharge no release from liability, where goods were obtained by false representations. *Atlanta Skirt Mfg. Co.*, 8 A. 299, 68 S. E. 1077.

Sale of exempted property by bankrupt, to delay or defraud creditor holding waiver; remedy in equity. *Pincus*, 139/365, 77 S. E. 82.

Bidding deterred fraudulently, ground for setting aside sale; sufficiency of allegations. *Dykes*, 129/99, 58 S. E. 645. Combination to suppress, successful; refusal to carry out agreement; equitable relief denied. *Ruis*, 138/150, 74 S. E. 1081, 42 L. R. A. (N. S.) 1198.

Bill of exceptions, fraudulent conduct of opposing counsel as to; and when no equitable relief obtained. *Beeland*, 145/839, 90 S. E. 46.

Bona fide purchaser from fraudulent grantee, without notice, protected. His title not invalidated by ground for reasonable suspicion. *Hinkle*, 133/255, 65 S. E. 427. Bona fides of purchase of land, how affected by knowledge of outstanding judgment and promise to pay it. *Rodgers*, 108/25, 33 S. E. 662. Bona fide untrue statements estop him who makes them, if acted on to injury of another. *Crosby*, 108/126, 132, 33 S. E. 913.

Burden of proof as to fraud, on carrier setting up. *Atlantic R. Co.*, 1 A. 22, 57 S. E. 973.

On issue of fraud, when shifted to accused. *Smith*, 141/486, 81 S. E. 220, Ann. Cas. 1915C, 999.

On party alleging. *Hale*, 133/631, 66 S. E. 781; *Mabry*, 133/832, 67 S. E. 91.

Of defense of fraud. *Widincamp*, 135/644, 70 S. E. 566.

Of fairness in contract between attorney and client. *Mann*, 145/268, 88 S. E. 968.

Of fairness of transaction by husband and wife, attacked by creditor. *Adams*, 147/470, 94 S. E. 568.

On wife to show that gift to husband was induced by fraud or undue influence. *Third National Bank*, 5 A. 114, 62 S. E. 826.

Business sold by fraudulent representations, measure of damages. *McCrary*, 119/876, 881, 47 S. E. 341.

Buyer defrauded without misrepresentation as to character or value of thing sold. *Washington Post Co.*, 7 A. 774, 68 S. E. 337.

Cancellation of deed for fraud. *Workmen's Asso.*, 135/5, 68 S. E. 697; *Manning*, 135/597, 69 S. E. 1126; *Widincamp*, 135/644, 70 S. E. 566; *Casey*, 105/198, 31 S. E. 427.

Of deed as void on account of collusion. *Reaves*, 120/727, 48 S. E. 199. Remedy denied for laches. *Wilkes*, 120/728, 48 S. E. 113.

Of deed for fraud, not decreed for creditor who has begun action at law. *Cunningham*, 135/249, 69 S. E. 101.

Of deeds for fraud; petition of weak-minded plaintiff, good as against demurrer. *Calhoun*, 114/642, 40 S. E. 714.

Of deed, not obtained on allegation of mere breach of contract. *Christian*, 145/284, 88 S. E. 986. Error in non-suit for want of tender by plaintiff. *Burt*, 145/865, 90 S. E. 73.

Of deed obtained by false representations, etc.; allegations sufficient. *Galloway*, 135/707, 70 S. E. 589.

Of deeds procured by fraud; laches as bar to equitable relief. *Smith*, 144/579, 87 S. E. 772. Not decreed, plaintiff not tendering repayment. *Bridges*, 127/679, 56 S. E. 1025.

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Does not discharge judgment founded on actual (not constructive) fraud. *Moody*, 134/721, 68 S. E. 604, 20 Ann. Cas. 301.

Discharge no release from liability, where goods were obtained by false representations. *Atlanta Skirt Mfg. Co.*, 8 A. 299, 68 S. E. 1077.

Sale of exempted property by bankrupt, to delay or defraud creditor holding waiver; remedy in equity. *Pincus*, 139/365, 77 S. E. 82.

Bidding deterred fraudulently, ground for setting aside sale; sufficiency of allegations. *Dykes*, 129/99, 58 S. E. 645. Combination to suppress, successful; refusal to carry out agreement; equitable relief denied. *Ruis*, 138/150, 74 S. E. 1081, 42 L. R. A. (N. S.) 1198.

Bill of exceptions, fraudulent conduct of opposing counsel as to; and when no equitable relief obtained. *Beeland*, 145/839, 90 S. E. 46.

Bona fide purchaser from fraudulent grantee, without notice, protected. His title not invalidated by ground for reasonable suspicion. *Hinkle*, 133/255, 65 S. E. 427. Bona fides of purchase of land, how affected by knowledge of outstanding judgment and promise to pay it. *Rodgers*, 108/25, 33 S. E. 662. Bona fide untrue statements estop him who makes them, if acted on to injury of another. *Crosby*, 108/126, 132, 33 S. E. 913.

Burden of proof as to fraud, on carrier setting up. *Atlantic R. Co.*, 1 A. 22, 57 S. E. 973.

On issue of fraud, when shifted to accused. *Smith*, 141/486, 81 S. E. 220, Ann. Cas. 1915C, 999.

On party alleging. *Hale*, 133/631, 66 S. E. 781; *Mabry*, 133/832, 67 S. E. 91.

Of defense of fraud. *Widincamp*, 135/644, 70 S. E. 566.

Of fairness in contract between attorney and client. *Mann*, 145/268, 88 S. E. 968.

Of fairness of transaction by husband and wife, attacked by creditor. *Adams*, 147/470, 94 S. E. 568.

On wife to show that gift to husband was induced by fraud or undue influence. *Third National Bank*, 5 A. 114, 62 S. E. 826.

Business sold by fraudulent representations, measure of damages. *McCrary*, 119/876, 881, 47 S. E. 341.

Buyer defrauded without misrepresentation as to character or value of thing sold. *Washington Post Co.*, 7 A. 774, 68 S. E. 337.

Cancellation of deed for fraud. *Workingmen's Asso.*, 135/5, 68 S. E. 697; *Manning*, 135/597, 69 S. E. 1126; *Widincamp*, 135/644, 70 S. E. 566; *Casey*, 105/198, 31 S. E. 427.

Of deed as void on account of collusion. *Reaves*, 120/727, 48 S. E. 199. Remedy denied for laches. *Wilkes*, 120/728, 48 S. E. 113.

Of deed for fraud, not decreed for creditor who has begun action at law. *Cunningham*, 135/249, 69 S. E. 101.

Of deeds for fraud; petition of weak-minded plaintiff, good as against demurrer. *Calhoun*, 114/642, 40 S. E. 714.

Of deed, not obtained on allegation of mere breach of contract. *Christian*, 145/284, 88 S. E. 986. Error in non-suit for want of tender by plaintiff. *Burt*, 145/865, 90 S. E. 73.

Of deed obtained by false representations, etc.; allegations sufficient. *Galloway*, 135/707, 70 S. E. 589.

Of deeds procured by fraud; laches as bar to equitable relief. *Smith*, 144/579, 87 S. E. 772. Not decreed, plaintiff not tendering repayment. *Bridges*, 127/679, 56 S. E. 1025.

Of instruments for; verdict authorized. *Bridges*, 148/99, 95 S. E. 964.

Care on part of person defrauded, demurrer setting up want of, not good here. *Farkas*, 119/515, 46 S. E. 670.

Carrier relieved by fraud of shipper. Fraud not shown by evidence here. *Central R. Co.*, 124/322, 329, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 110 Am. St. R. 170, 4 Ann. Cas. 128.

Facts raised no issue of fact as to fraudulent valuation of freight. *Atlanta &c. R. Co.*, 145/708, 89 S. E. 817.

Caution to prevent fraud, when required. *Boykin*, 14 A. 666, 82 S. E. 60.

Charge to jury must cover issue of fraud. *Pusser*, 147/60, 92 S. E. 866.

Erroneous in giving code sections as to fraud, which were inapplicable to the case of a transfer to defraud creditors. *St. Paul Ins. Co.*, 113/790, 39 S. E. 483.

Did not express opinion that fraud was perpetrated. *Hart*, 130/505, 61 S. E. 26.

That certain fact would be a "circumstance tending to prove lack of fraudulent intent," province of jury invaded by. *Hamilton*, 18 A. 295, 89 S. E. 449.

Cheating and swindling. *Goddard*, 2 A. 154, 58 S. E. 304; *Crawford*, 2 A. 185, 58 S. E. 301; *Ager*, 2 A. 158, 58 S. E. 374; *Johnson*, 2 A. 182, 58 S. E. 415; *Moseley*, 2 A. 190, 58 S. E. 298.

By false representations of ownership of property, etc.; admissibility and sufficiency of evidence. *Kinard*, 1 A. 146, 58 S. E. 263.

By obtaining money, etc., on contract to perform services; intent not to perform must exist when promise made. *Mulkey*, 1 A. 522, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284; *Heywood*, 1 A. 530, 57 S. E. 1025.

Check offered in payment is fraud, where no funds in hands of drawee and no agreement by him to pay. *Lester-Whitney Co.*, 1 A. 244, 58 S. E. 212.

Circumstances from which fraud could be inferred appearing, verdict upheld. *Wilson*, 105/513, 31 S. E. 171.

Not sufficient to show, in conveyance by debtor. *Cowart*, 101/1, 29 S. E. 270.

Slight, may be sufficient proof of fraud. *Atlanta Skirt Mfg. Co.*, 8 A. 300, 68 S. E. 1077.

Slight, sufficient to authorize inference of collusion to defeat creditors, in claim case. *Bryant*, 19 A. 82, 90 S. E. 1027.

Tending to show; evidence that consent of some of parties was not obtained to alleged consent verdict and decree attacked as fraudulent. *Kidd*, 105/209, 31 S. E. 430. Circumstantial evidence of fraud. *Barco*, 5 A. 372, 376, 63 S. E. 224.

Claim case; questions as to fraud, properly submitted to jury. *Jones*, 6 A. 389, 65 S. E. 43. Evidence showing fraud in sale to claimant. *Causey-Lumber Co.*, 6 A. 444, 65 S. E. 194.

Collateral attack of judgment for fraud, when not allowed. *Alabama R. Co.*, 139/224, 228, 76 S. E. 1001, 43 L. R. A. (N. S.) 236, 34 Ann. Cas. 1914D, 996; *Hood*, 143/616, 85 S. E. 849. When competent. *Milner*, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977.

Collusion, allegations of, did not authorize recovery of debtor's fraudulent grantee alone. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

Between husband and wife to defeat creditor. *Smith*, 13 A. 296, 79 S. E. 88. Collusive conveyance to defraud creditor, grantor in, could not enforce covinous contract with his grantee by having property applied, etc. *Glover*, 132/796, 65 S. E. 64.

Color of title; decree in collusive suit is no basis of prescription. *Wardlaw*, 106/29, 31 S. E. 785.

Composition with creditors, fraud on parties to, by secret arrangement whereby one of the parties received more than his share from debtor; debtor could recover the excess. *Brown*, 111/404, 36 S. E. 813.

Compromise and settlement induced by misrepresentations; repayment essential to suit. *Hillyer*, 136/516, 71 S. E. 790. Compromised or settled, fraud may be. *Tuttle*, 134/325, 331, 67 S. E. 806, 20 Ann. Cas. 168.

Testimony of offer to, when not admissible. *Dance*, 134/646, 68 S. E. 434.

Concealment or appropriation of property subject to lien, liability for. *Anderson*, 117/919, 43 S. E. 982. See *Shealy*, 117/794, 45 S. E. 70.

By continued silence as constituting fraud. *American National Bank*, 131/854, 68 S. E. 622, 21 L. R. A. (N. S.) 962. See *Stonecipher*, 131/688, 63 S. E. 215, 127 Am. St. R. 248.

Fraudulent, not shown. *Irvin*, 18 A. 662, 90 S. E. 359.

Of material fact in purchase of shares by director from stockholder, ground for rescission. *Oliver*, 118/362, 45 S. E. 232.

Proof of, when authorizes inference of actual, moral fraud. *Burpee*, 132/466, 64 S. E. 486.

Conclusion of pleader as to fraud, unsupported by allegations of fact. *Daniel*, 18 A. 25, 27, 88 S. E. 745.

Confidence in false statement, which more vigilant person would not have reposed, no advantage to perpetrator. *Phillips*, 144/850, 88 S. E. 195. Cf. *Baker*, 144/502, 87 S. E. 659.

Confidential relation of woman and her stepson, as affecting issue of fraud in procuring deed. *Netherton*, 142/51, 55, 82 S. E. 449.

Between contracting parties, rule as to. *Boykin*, 14 A. 666, 82 S. E. 60. Intimacy not, constituting such relations. *Ib.*

Consideration, failure of, based on failure to apprise purchaser as to claims against the property, when no defense. *Eskridge*, 106/587, 32 S. E. 635.

Inadequate, did not give rise to presumption of fraud here. *Sumner*, 121/1, 6, 48 S. E. 727.

Inadequate, when basis for presumption of fraud. *Hoyle*, 105/128, 31 S. E. 187.

If grossly inadequate, may shock the conscience and evidence fraud. *Shirk*, 148/500, 97 S. E. 66.

Conspiracy or scheme to form corporation and exclude lessees of timber, etc. *Forlaw*, 124/262, 52 S. E. 898.

Of defendant charged, petition not demurrable for multifariousness or misjoinder, etc. *Greer*, 133/193, 65 S. E. 416; *Moody*, 133/741, 66 S. E. 908.

Of insolvent debtor and another, to prevent secured creditor from subjecting personalty to his claim, injunction and receiver against. *Johnson*, 112/449, 37 S. E. 766.

Between mother and administrator to defraud widow and children of intestate. *Kelley*, 147/741, 95 S. E. 287.

To defraud alleged in suit against one person alone; action not defeated by failure to prove conspiracy. *Hill*, 19 A. 334, 91 S. E. 434.

To defraud creditors; sufficiency of allegations as to, as basis for equitable relief. *Ernest*, 107/61, 32 S. E. 898. Effect of admission by one conspirator pending the enterprise. *Almand*, 148/369, 96 S. E. 962.

To defraud plaintiff of property; evidence sufficient to prevent nonsuit. *Flynt*, 146/535, 91 S. E. 691.

To obtain money; action jointly in tort or severally in assumpsit, where defendants reside in different counties. *Cowart*, 137/586, 73 S. E. 822, Ann. Cas. 1913A, 932.

Constitutionality of law for punishing fraud. *Latson*, 136/683, 71 S. E. 1052.

Constructive fraud, when no ground for rescission. *Metcalf Live Stock Co.*, 23 A. 690, 99 S. E. 230.

Consummation of fraud, pending suit to enjoin, will not deprive a court of equity of jurisdiction to grant other relief appropriate to the changed status. *Everett*, 127/103, 56 S. E. 123, 119 Am. St. R. 324.

Contract (offer of reward), execution of, procured by; conflict of evidence on issue settled by verdict. *Campbell*, 108/108, 33 S. E. 871.

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Allegations of fraud in procuring, not pertinent to suit for specific performance. *Herring*, 141/825, 82 S. E. 132.

Altered by striking words from it, when no defense against notes thereafter given. *Byrd*, 127/30, 56 S. E. 86.

For services made with intent to defraud; prosecution under act of 1903 as to. *Calhoun*, 119/312, 46 S. E. 428; *Hart*, 121/140, 48 S. E. 925; *Campbell*, 121/167, 48 S. E. 920. Act of 1903 not repugnant to clause of constitution inhibiting imprisonment for debt. *Lamar*, 121/153, 48 S. E. 977.

Induced by fraud; necessary allegations. *L. & N. R. Co.*, 129/234, 236, 58 S. E. 706.

Induced by fraud, sufficient plea as to *House*, 125/644, 54 S. E. 735.

Induced by fraud; when no ground for relief alleged. *Smith*, 131/470, 62 S. E. 673. Case for reformation alleged. *Dannelly*, 131/694, 63 S. E. 257.

Instrument purporting to set forth, indicating unfairness and injustice. *Carpenter*, 116/675, 677, 42 S. E. 1016.

In writing omitting part of agreement, through fraud; insufficient plea as to. *Turner*, 20 A. 735, 93 S. E. 234.

Misrepresentations inducing signing of. *Central R. Co.*, 120/83, 47 S. E. 641, 1 Ann. Cas. 806.

Misrepresentation of stipulations in, when no defense in suit by indorsee for value. *Summerford*, 126/153, 54 S. E. 1025.

No prayer to reform; defense based on fraud, when not sustained. *Harris*, 135/131, 68 S. E. 1040.

Fraud as defense to action on note; misrepresentation wilfully made to deceive. *Turner*, 2 A. 57, 58 S. E. 310.

Not invalidated by fraud in promisor without injury to promisee. *Bowen*, 2 A. 521, 58 S. E. 784.

Not result from signature obtained by fraud, when. *G. S. & Ry. Co.*, 15

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A. 831, 84 S. E. 323; *A. C. L. R. Co.* 15 A 842, 84 S. E. 316.

Not set aside for fraud, at instance of one who has not offered restitution. *Jordy*, 139/325, 77 S. E. 162; *Walker*, 139/547, 549, 77 S. E. 795.

Of purchase procured by fraud, may be ratified. *Tuttle*, 134/325, 330, 67 S. E. 806, 20 Ann. Cas. 168. Issue whether contract between partners was procured by. *Dance*, 134/646, 68 S. E. 434. Defense sustained. *Equitable Mfg. Co.*, 134/842, 68 S. E. 650.

Of sale induced by material representation falsely made with knowledge is actual fraud. *Emlen*, 133/726, 66 S. E. 934.

Procured by fraud, plea not successfully set up by one who, having capacity and opportunity to read it, signs without emergency. *Truitt-Silvey Hat Co.*, 130/687, 61 S. E. 481.

Rescindable for fraud, where book agent induced purchase by false statement that he had shown book to the purchaser's wife, and that she had authorized the agent to tell him to buy it. *Washington Post Co.*, 7 A. 774, 68 S. E. 337.

Right to rescind, for fraud, how determined. *Gross*, 135/60, 68 S. E. 834. 31 L. R. A. (N. S.) 900.

Signed, without reading; defense of fraud in procuring, not available. *Rounsaville*, 127/735, 56 S. E. 1030.

Unreasonable or foolish, not necessarily fraudulent. *Equitable Loan Co.*, 117/599, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177.

Valid, but fraud used in procuring notes in compliance therewith, no defense to suit on them. *Strickland*, 118/214, 44 S. E. 997.

Violated in fraud of defendant's rights; allegations insufficient as defense. *Beck Co.*, 118/836, 45 S. E. 675.

Void as obtained by; when not germane to issue of tenancy or not. *Crawford*, 139/394, 77 S. E. 557.

Void for fraud; and parol evidence to show fraud. *Williams*, 3 A. 756.

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60 S. E. 372. Compare *Branan*, 3 A. 587, 60 S. E. 325.

Writing, omission to include a covenant in, was no fraud under circumstances. *Citizens Bank*, 143/103, 84 S. E. 465.

Contracting party not essential party to attack on, for fraud in obtaining contract when. *Houser*, 9 A. 768, 72 S. E. 276.

Of wife obtained by fraud of husband; no defense as against party ignorant of the fraud. *Burgess*, 23 A. 194, 98 S. E. 170.

Procured by fraud, allegations not showing cause to abrogate. *Mills*, 148/23, 95 S. E. 698; *Hinkle*, 148/250, 96 S. E. 340.

Procured by misrepresentations; cause of action not alleged. *Freeman*, 148/689, 98 S. E. 263.

Conversion of money entrusted. *Keys*, 112/392, 37 S. E. 762, 81 Am. St. R. 63.

Of property entrusted for delivery elsewhere is larceny after trust, not simple larceny. *Barron*, 126/92, 54 S. E. 812.

Conveyance attacked as made to defeat creditors; admissibility of evidence in suit by cosurety. *Varn*, 142/243, 82 S. E. 641.

Attacked for fraud, burden of proving fair transaction. *Buttrill Guano Co.*, 147/11, 92 S. E. 521.

By debtors did not appear to be in fraud of creditor. *Hatcher*, 142/193, 82 S. E. 513.

By debtor to wife, voluntarily or for value, yields to equitable remedy of creditor, when. *Lane*, 140/415, 78 S. E. 1082.

Between husband and wife, on valuable consideration, may be void for fraud. *Pfeiger*, 147/473, 94 S. E. 580.

By intestate; no recovery by his administrator, to pay defrauded creditors. *Boswell*, 147/734, 95 S. E. 247.

By father to son, when not good as against creditors. *Parsons*, 119/42, 45 S. E. 697.

By husband to wife, admissibility of evidence on attack of, by his creditor. *Kirkman*, 145/452, 89 S. E. 411; *Warren*, 145/503, 89 S. E. 520.

By husband to wife, leaving him without means to pay debts, slight circumstances authorized verdict finding it fraudulent against creditors. *Powell*, 119/696, 46 S. E. 847.

By husband to wife to hinder or defraud creditors. rulings relating to. *Gaskins*, 145/806, 89 S. E. 1080; *Lane*, 145/810, 89 S. E. 1083.

By insolvent mother to daughter and son-in-law, not necessarily fraudulent. *Cooley*, 111/439, 36 S. E. 786.

For fraudulent purpose, not set aside, at instance of grantor or his privies in estate, though without consideration. *Castellow*, 119/461, 46 S. E. 632.

Fraudulent as against creditors, good as against persons not affected by the fraud. *Moore*, 123/424, 51 S. E. 351.

Fraudulent as to creditors, valid as between parties. *McDowell*, 107/812, 33 S. E. 709, 73 Am. St. R. 155; *St. Paul Ins. Co.*, 113/790, 39 S. E. 483.

Fraudulent, by former partner, when not relevant on trial of traverse to attachment. *Hobbs*, 103/1, 30 S. E. 257.

Fraudulent; intent of grantor did not render void as to grantee. *Hollis*, 103/76, 29 S. E. 482; *Lamkin*, 103/631, 30 S. E. 596.

Fraudulent, proper instructions to jury as to. *Banks*, 119/796, 47 S. E. 332.

Fraudulent, statute of 13th Elizabeth as to; statute liberally construed. *Banks*, 119/796, 47 S. E. 332.

Fraudulent, when renders liable to attachment. *Hobbs*, 103/1, 30 S. E. 257.

Made long after attachment suit issued, when not competent evidence. *Hobbs*, 103/1, 30 S. E. 257.

Made to wife, at instance of husband, evidence warranting verdict that it was not good as against creditor. *Longmore*, 121/411, 49 S. E. 264.

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Obtained by fraudulent promise of marriage, no defense to attachment for contempt of court order. *Smith*, 146/83, 90 S. E. 711.

Obtained by imposition upon old and illiterate imbecile, as ground of equitable relief. *Matthews*, 146/732, 92 S. E. 52.

Obtained by fraud; when not set aside. *Jackson*, 146/675, 92 S. E. 65; *Moss*, 146/686, 92 S. E. 213.

Of future contingent interest by inheritance, invalid attempt to make. *Dailey*, 144/395, 399, 87 S. E. 469.

On issue whether fraudulent, sayings of deceased maker that he made it in settlement of bona fide debt, when inadmissible. *Hollis*, 103/75, 29 S. E. 482.

To avoid paying debts did not authorize grantor's creditor without lien to sue grantee alone. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

To conceal ownership; equitable petition to subject the property to dormant judgment. *Kruger*, 111/383, 36 S. E. 794.

To conceal property from creditors; evidence made case for jury. *Stewart*, 131/586, 62 S. E. 986.

To daughter, attacked by other children for fraud and undue influence, demurrer sustained. *Lee*, 119/49, 45 S. E. 689.

To defeat alimony, equitable action against. *Moss*, 144/194, 86 S. E. 548.

To defeat collection of debt by foreign judgment, when set aside. *Hope*, 142/310, 82 S. E. 929.

To defeat creditors. *Helmken*, 138/200, 75 S. E. 3; *Jarrett*, 108/202, 203, 74 S. E. 1092.

To defraud creditors; admissibility of evidence as to declarations of grantor in possession of the property conveyed. *Banks*, 119/793, 47 S. E. 332.

To defraud creditor estops grantor. *Glover*, 132/796, 65 S. E. 64.

protects plaintiff in trover, before judgment; also surety on bail-bond who

To defraud creditors, statute as to,

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pays judgment. *Banks*, 119/793, 47 S. E. 332.

To hinder creditors; conveyances not subject to attack by subsequent creditors, when. *Jowers*, 10 A. 297, 73 S. E. 415. Vendor's retention of possession did not invalidate, as to pre-existing creditor, a sale otherwise bona fide. *Ib.*

To hinder creditors, when void, though intent unknown to person taking. *Ernest*, 107/61, 32 S. E. 898.

To sister, pending suit, attacked for fraud, evidence authorized finding either way, verdict upheld. *Humphreys*, 119/936, 47 S. E. 188.

To wife of insolvent, by holder of security-deed from him, instructions as to. *Rushing*, 105/166, 31 S. E. 154.

Voluntary, prima facie fraudulent as against creditor; facts rebutting presumption. *Cohen*, 105/339, 31 S. E. 205.

To delay, hinder, or defraud creditors; conjunctive statement erroneous. *Evans*, 101/152, 28 S. E. 645.

Corporation organizers transacting business in its name before minimum subscribed. *John V. Farwell Co.*, 137/176, 73 S. E. 13; *Smith*, 148/764, 98 S. E. 466. See *Lowe*, 148/388, 96 S. E. 1001.

Assets transferred to new corporation formed by members, to defeat creditors; remedy of creditors. *Buckwalter*, 115/484, 41 S. E. 1010.

Officer's acts; what essential to maintain action in equity by minority stockholder. *Smith*, 147/7, 92 S. E. 519; *Millet*, 147/8, 92 S. E. 515.

Costs, manner in which taxed, not show collusion in decree here. *Johnson*, 121/763, 49 S. E. 757.

Credit obtained by fraud. *Bacon*, 117/207, 43 S. E. 482; *Mashburn*, 117/567, 44 S. E. 97.

Creditors, conveyance to defeat or hinder; and when claimant's title not defeated by grounds for suspicion. *Warren*, 145/503, 89 S. E. 520.

Conveyance made to delay or hinder is fraudulent. Not set aside at in-

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stance of grantor. *Tune*, 131/528, 62 S. E. 976. Avoidable. *Almand*, 148/369, 96 S. E. 962; *Krueger*, 148/429, 96 S. E. 861; *Mitchell*, 148/596, 97 S. E. 528; *Norton*, 148/652, 98 S. E. 76.

Conveyance four years before debt arose not treated as made to defraud. *Mitchell*, 148/244, 96 S. E. 866.

Conveyance to wife of bidder at sale in fraud of. *Pusser*, 147/60, 92 S. E. 866.

Conveyance of husband to wife in fraud of; admissibility of evidence verdict authorized. *Strickland*, 113/409, 62 S. E. 322; *Morehead*, 138/808, 63 S. E. 507.

Equitable petition by, attacking debtor's conveyance, how far demurrable, and how far sustainable. *Maynard*, 138/549, 75 S. E. 582; *Shepherd*, 138/555, 75 S. E. 585.

Fraud on, as defense; plea insufficient in not showing defendant was innocent party. *Bank of Lawrenceville*, 129/583, 59 S. E. 291.

Meaning of "and others," added by codifiers, in provisions as to acts fraudulent against "creditors and others" (Civil Code, § 3224), did not include parties. *McDowell*, 107/815, 33 S. E. 709, 73 Am. St. R. 155.

Mortgages made to defeat. *Evans*, 101/152, 28 S. E. 645.

Of corporation, liability to, on taking over all its assets and paying money to stockholders. *Smith Co.*, 143/254, 84 S. E. 444.

Petition of, to cancel bill of sale for fraud, maintained. *Rodgers*, 112/624, 37 S. E. 877.

Right of relief against agreements in fraud of. *Booth*, 132/109, 63 S. E. 907.

Sale in fraud of, by debtor, for inadequate consideration. *Oglesby*, 118/203, 44 S. E. 990.

Transfer not fraudulent as against, here. *Wilson*, 11 A. 348, 75 S. E. 334.

When no fraud against, in note given in settlement of one debt against

estate. *Golding*, 5 A. 545, 63 S. E. 706.

Without lien may attack sale by debtor as fraudulent, and obtain judgments in one equitable proceeding. *Booth*, 122/333, 50 S. E. 173.

Damages for fraud in procuring note; recovery against original payee by maker held liable to transferee. *Kitchens*, 8 A. 587, 69 S. E. 1086.

An essential of legal fraud. *Mobley*, 13 A. 728, 79 S. E. 906.

Allegations made no case of fraud in procuring settlement and discharge of claim for. *Smith*, 131/470, 62 S. E. 673.

For fraudulent sale, measure of. *McCrary*, 119/876, 881, 47 S. E. 341.

From fraud, plea as to, too indefinite here. *McCrary*, 119/876, 47 S. E. 341.

From fraud; causes of action. *Mitchell*, 143/827, 85 S. E. 1050, Ann. Cas. 1917A, 469.

From conspiracy to suppress bidding at auction sale of land; measure declared on was not recoverable. *Allen*, 146/244, 91 S. E. 70.

From deceit, not recovered; evidence not showing knowledge of falsity, or intent to deceive. *Dumas*, 143/212, 84 S. E. 538.

From misrepresentations of boundary of land, and of well of water on it, measure of. *Doss*, 139/562, 77 S. E. 793.

From fraud set up as cross-demand in suit on contract, without showing offer to rescind on discovery of. *Christian*, 114/360, 40 S. E. 296.

Suffered in settlement by legatees with executors, on account of misrepresentations of land value, etc.; allegations subject to demurrer. *Swift*, 132/469, 64 S. E. 559.

Dealing "at arm's length," as affecting right to complain of fraud. *Marietta Fertilizer Co.*, 4 A. 245, 61 S. E. 149.

Debtor and his transferees, petition against, charging conspiracy, good on demurrer. *Peoples*, 108/527, 34 S. E. 5.

Conveyance by, of equity in land

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partly unpaid for, grantee assuming payment, how effective. **Loewenherz**, 144/556, 87 S. E. 778.

Conveyance by, to defraud creditors; evidence raised issue. **Smith**, 136/809, 72 S. E. 345.

Conveyance by, when insolvent, or to defeat creditors, void. **Beasley**, 144/379, 87 S. E. 293.

Ownership of land by, and keeping title in other person to defeat creditors; prima facie case. **Webb**, 142/423, 83 S. E. 99.

Sale of property by, to avoid payment, admissibility of evidence on issue as to. **First National Bank**, 142/262, 82 S. E. 625.

Sale by, of stock of goods in bulk, not complying with act of 1903, void on ground of fraud. **Carstarphen**, 124/544, 52 S. E. 598.

Deceit action for, not authorized by representation inducing purchase of stock of corporation, here. **Dunaway**, 19 A. 267, 91 S. E. 345.

Allegations in action for, sufficient as against demurrer. **Peacock**, 20 A. 540, 93 S. E. 171. Error in charge to jury as to measure of damages. **Ib.**

Allegations insufficient to show that plaintiff bought on the faith of the false representations. **Garbutt Lumber Co.**, 6 A. 189, 64 S. E. 698.

By representations in sale of shares of stock; instructions to jury as to essential elements, etc., considered. **Lyle**, 20 A. 374, 378, 93 S. E. 20.

Action for, on account of representation to obtain credit for another, not maintainable, unless the representation was in writing and signed. **Smith**, 10 A. 294, 73 S. E. 549.

When purchaser of note may maintain action for, against vendor not disclosing insolvency of maker. **Gordon**, 105/144, 31 S. E. 151.

Whether action for, is remedy of shipper against carrier misquoting rate. **Ga. R. Co.**, A. 424, 63 S. E. 528.

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Action not based on, but on breach of warranty in sale. **Burpee**, 132/464, 64 S. E. 486. Action of, not alleged. **Graves**, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

Allegations as to fraud and misrepresentation here did not make action for. **Allred**, 113/441, 39 S. E. 101. Facts authorizing recovery for. **Hollingsworth**, 113/1099, 39 S. E. 465.

Facts did not authorize recovery. **Cooley**, 113/1163, 39 S. E. 486.

Allegations insufficient for action of. **Morgan**, 146/352, 91 S. E. 117; **L. & N. R. Co.**, 129/234, 236, 58 S. E. 706.

By misrepresentation in sale of land. **Waldon**, 23 A. 428, 98 S. E. 367.

Cause of action for, alleged. **Davis**, 141/33, 80 S. E. 284.

By representations in sale of horse; knowledge and intent essential. **Houze**, 144/700, 87 S. E. 1054.

Inducing acceptance of property in settlement of debt, limitation of action for. **Crawford**, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932.

In representations as to mule, damages for. **Rutherford**, 1 A. 499, 57 S. E. 927.

In sale by misrepresentation as to nature of tenancy of occupant of land sold; measure of damages. **Bridges**, 6 A. 689, 65 S. E. 700.

In sale of shares of stock; allegations sufficient. **Camp**, 6 A. 608, 65 S. E. 583.

To support action of, fraud and damages must concur. **Brooke**, 108/251, 33 S. E. 849.

Whether action maintainable where misrepresentation was made by mistake; charge to jury not required. **Camp**, 6 A. 608, 65 S. E. 583.

Decree obtained by fraud, set aside in equity. **Bigham**, 114/456, 40 S. E. 303.

Of divorce, based on constructive service only, open to collateral attack on ground of fraud. **Solomon**, 140/379, 78 S. E. 1079.

Deed by husband to wife assailed as in fraud of creditors; rulings on evidence and charge to jury, and as to status of purchaser from grantee. *Hinkle*, 133/255, 65 S. E. 427. See *Brand*, 133/750, 66 S. E. 935.

Competency of evidence on issue of fraud in procuring. *Ogburn*, 142/360, 82 S. E. 1070.

Description in, covered land not intended; allegations showed no case of fraud. *Cobb Real Estate Co.*, 138/589, 75 S. E. 652.

Evidence of fraud in obtaining, not available to change its terms, where no reformation sought. *Bell*, 133/9, 65 S. E. 90.

Obtained by fraud, voidable, not void. Doctrine not applied where grantor insane when deed executed. *Boynton*, 112/354, 37 S. E. 437.

Obtained by fraud; vendee could not set up laches as bar to action for equitable relief. *Manning*, 135/597, 69 S. E. 1126.

Obtained from mother to son by fraud; consideration, her support and maintenance. *Lanfair*, 112/489, 37 S. E. 717.

Procured by fraud; allegations sufficient on general demurrer. *Calvert Mortgage Co.*, 143/590, 85 S. E. 758.

Procured by fraud, canceled. *Pavlovski*, 134/704, 705, 68 S. E. 511; *Jones*, 134/857, 68 S. E. 729, 137 Am. St. R. 276.

Procured by fraud; finding against contention not reversed here. *Cowart*, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Procured by misrepresentation, inadequacy of consideration a collateral or incidental issue. *Thomas*, 118/589, 45 S. E. 449.

Procured by fraud; necessary parties to petition to set aside. *Gaines*, 116/475, 42 S. E. 763.

Procured from illiterate grantor, not speaking terms of agreement; equitable relief. *Rigell*, 142/357, 82 S. E. 1057.

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Signed by woman (not illiterate) without understanding it, when no ground for imputing fraud. *Bond*, 133/166, 65 S. E. 376, 134 Am. St. R. 199.

So prepared by purchaser as to cover more land than was sold, seller relieved in equity. *Gabbett*, 137/143, 72 S. E. 924.

Procured by fraud, from sick grantor by children of his former marriage, to exclude wife and child; petition not demurrable. *Jones*, 127/379, 56 S. E. 426.

Procured by pretense that it was a note; effect of grantor's remaining in possession of the land. *Kent*, 142/49, 82 S. E. 440. That deed was a will; cancellation. *Netherton*, 142/51, 82 S. E. 449.

Procured by fraud, set aside. *Neel*, 130/756, 61 S. E. 729.

To brother, before judgment against grantor, pending suit unknown to bona fide grantee, upheld. *Cowart*, 101/1, 29 S. E. 270.

Undue influence in procuring execution of, as cause for cancelling it. *Hubbard*, 148/238, 96 S. E. 827.

Witness not allowed to deny that he used fraud or deception in procuring signature to. *Roberts*, 136/790, 72 S. E. 239.

Defective machinery sold by fraud, effect of failure to make prompt offer to rescind, etc. *Page*, 106/77, 31 S. E. 804.

Defense by party in *pari delicto*, based on fraud, not allowed. *Williams*, 18 A. 583, 90 S. E. 88.

Fraud to be specially pleaded as, when. *Southern Life Ins. Co.*, 9 A. 504, 71 S. E. 742.

Of fraud in procurement of note, not sustained by evidence. *Seagraves*, 136/877, 72 S. E. 349.

Of fraud, must show injury. *Bowen*, 2 A. 521, 58 S. E. 784.

Setting up fraud, against trover, not available to one not in privity with person defrauded. *Jarrett*, 138/202, 74 S. E. 1092.

- What allegations essential to complete, on ground that contract was procured by fraud. *Truitt-Silvey Hat Co.*, 130/637, 61 S. E. 481.
- Deficiency in land sold; misrepresentation as to dimensions. *Gordon*, 19 A. 795, 92 S. E. 290.
- Definition of "fraudulent." *Isaacs*, 7 A. 801, 68 S. E. 338.
- Delay, as bar to rescission for fraud. *Coca-Cola Bottling Co.*, 13 A. 772, 80 S. E. 32.
- Intent to delay is legal fraud. *Monroe Co.*, 108/449, 34 S. E. 176.
- Delivery of sample article to salesman does not tend to mislead third person as to its ownership. *Harris Co.*, 110/302, 34 S. E. 1003.
- Demand for payment of money for joining walls, and threatening to prevent joining, is not fraud. *Leader*, 135/468, 69 S. E. 721.
- Demurrer to petition charging fraud admits it only so far as facts alleged constitute fraud. *Miller*, 121/761, 49 S. E. 754.
- Diligence, failure in, when bars relief against fraud. *Crawford*, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932; *Basch*, 134/518, 68 S. E. 75; *Weaver*, 134/154, 67 S. E. 662.
- In discovering fraud, not shown. *Irvin*, 18 A. 662, 90 S. E. 359. See *L. & N. R. Co.*, 18 A. 84, 88 S. E. 905.
- Lacking in party alleging fraud. *Towns*, 16 A. 300, 85 S. E. 274.
- Ordinary care, power to discover truth by, affecting bar of limitation. *American National Bank*, 131/854, 63 S. E. 622, 21 L. R. A. (N. S.) 962.
- To detect and discover fraud, duty of, on one whose action is founded on. *Frost*, 144/26, 85 S. E. 1028. See *Baker*, 144/502, 87 S. E. 659.
- To discover fraud, duty of. *Bennett*, 139/27, 76 S. E. 568.
- To discover fraud, lacking; failure not excused by allegations here. *Garbutt Lumber Co.*, 6 A. 189, 64 S. E. 698. See *Bridges*, 6 A. 689, 691, 65 S. E. 700.
- Pleading insufficient to avoid bar of limitation. *Edwards*, 102/19, 29 S. E. 129.
- Wanting, bar of statute of limitations not arrested. *Maxwell*, 117/471, 43 S. E. 704.
- Whether wanting, a jury question. *Summerour*, 119/1, 45 S. E. 713.
- Disclosure not made by shipper to carrier, as to value of article shipped, when fraud, releasing carrier from all liability. *Southern Express Co.*, 5 A. 689, 63 S. E. 809. See *High Co.*, 5 A. 863, 63 S. E. 1125. No fraud here. *Fine*, 10 A. 165, 73 S. E. 35.
- Of facts, when required. *Marietta Fertilizer Co.*, 4 A. 245, 248, 61 S. E. 149.
- Disproportion of value, when considered in passing on bona fides of transaction. *Collier*, 137/658, 74 S. E. 275, Ann. Cas. 1913A, 1110.
- Division in kind of land of estate; action for setting aside, cancellation, etc., demurrable. *English*, 146/482, 91 S. E. 542.
- Of land, report of commissioners on, resulting from fraud or mistake, should be set aside on objection. *Shumate*, 108/439, 33 S. E. 991.
- Divorce decree on false ground, petition to cancel, and action for damages, demurrable. *Sonklin*, 148/640, 98 S. E. 221.
- Election, misleading statements of managers to voters were not such as to invalidate. *Mabry*, 133/831, 67 S. E. 91.
- Election of remedies on discovery of fraud. *Tuttle*, 134/328, 67 S. E. 806, 20 Ann. Cas. 168.
- Equity takes peculiar cognizance of fraud. *Crawford*, 139/539, 77 S. E. 826.
- Action in, to cancel fraudulent deed and to obtain judgment against debtor, venue of. *Fourth National Bank*, 143/137, 84 S. E. 546. See *Bryant*, 143/217, 84 S. E. 739.
- Proceeding in, not necessary, to show fraud and offer to rescind, as against party settling up contract of

release. *Houser*, 9 A. 766, 72 S. E. 276.

Proceedings in, to subject assets of bankrupt grantor, in hands of fraudulent grantee, to payment of debts, suit here was not. *Graves*, 132/786, 65 S. E. 112, 26 L. R. A. (N. S.) 545.

Relief in, against fraud; tender of money admitted to be due, when necessary. *Craft*, 135/521, 69 S. E. 742.

Relief in, denied to one who aided to defeat a creditor and was victimized. *Bagwell*, 116/464, 42 S. E. 732.

Subscribers to corporate stock not entitled to relief in, on allegations here. *Rogers*, 137/555, 73 S. E. 848.

Remedy in, by foreclosure on personality, when not afforded on allegations of fraud. *Ford*, 144/357, 87 S. E. 274.

Escrow obtained by grantee deceiving depository passes no title. *Dixon*, 102/461, 31 S. E. 96, 66 Am. St. R. 193.

Estoppel by not moving to rescind on discovery of fraud, and continuing to receive payment. *Columbian Ins. Co.*, 146/267, 272, 91 S. E. 106.

For fraud, when not declared in favor of buyer with notice. *Stonecipher*, 131/688, 63 S. E. 215, 127 Am. St. R. 248.

On account of misrepresentations, extends to heirs and representatives; not purchaser bona fide. *Thornton*, 133/825, 829, 67 S. E. 97, 134 Am. St. R. 226.

To deny validity of contract (insurance) by delay to repudiate and by collecting money under, after knowledge. *German Am. L. A.*, 102/720, 29 S. E. 615.

Of maker of deed, to set up his own fraud. *Garnett*, 23 A. 432, 98 S. E. 363.

Evidence conflicting as to fraud, in regard to horse swap, error in direction of verdict. *Hames*, 141/227, 80 S. E. 711.

Authorized no finding of fraud, on alleged misrepresentation of number of acres of land sold. *Currie*, 136/473, 71 S. E. 798.

Abuse and ill treatment, with threats and violence, not irrelevant to issue of fraud. *Strickland*, 147/494, 94 S. E. 766.

Admissible, that plaintiff's father in his presence promised to withdraw suit. *Moore*, 139/597, 77 S. E. 820.

Failed to sustain allegation of fraud in proceeding with trial after agreeing to dismiss case. *Keen*, 136/194, 71 S. E. 141.

Insufficient as basis of charge of court on fraud. *Hilton*, 8 A. 13, 14. 68 S. E. 746.

Insufficient to show intent to defraud creditors. *Wilson*, 11 A. 348, 75 S. E. 334.

Meager and unsatisfactory as to discovery of fraud, and prompt action to rescind for. *Brown Bank & Co.*, 143/52, 84 S. E. 183.

Not showing practice of fraud or undue influence, theory not to be submitted to jury. *Newman*, 134/137, 67 S. E. 662.

Of expressed intent to transfer note to avoid paying debts, not admissible as against holder for value, before maturity, and without notice. *Oliver*, 130/72, 60 S. E. 254.

Of false statement of agent procuring note, admissibility of. *Bank of Lavonia*, 140/594, 79 S. E. 459.

Of fraudulent intent; admissibility of other transactions. *Saffold*, 11 A. 329, 75 S. E. 338; *McCrory*, 11 A. 787, 76 S. E. 163.

Of good faith relevant in reply to charge of fraud. *Birmingham Co.*, 101/183, 28 S. E. 534.

Of intent; admissibility of former transactions. *Clarke*, 5 A. 93, 62 S. E. 663.

Of fraud without plea, when considered in reply to plea of release. *Central R. Co.*, 133/153, 65 S. E. 367.

Parol proof of fraud in procuring written contract, admissible. *Pollock*, 15 A. 1, 82 S. E. 381.

Rule that parol testimony shall not be received to vary written contract, not applied if contract procured by fraud. *Mizell Live Stock Co.*, 10 A

Evidence—(Continued).

362, 73 S. E. 410; **Chandler-Blackstad Co.**, 10 A. 383, 73 S. E. 413.

Not showing fraud. Grantor and grantee were brothers. **Cowart**, 101/1, 29 S. E. 270.

To rebut charge of fraud; admissibility of indictment procured by plaintiff against another than defendant. **Fite**, 142/660, 83 S. E. 515.

Execution sale after death of defendant in fi. fa., before administrator appointed, no fraud on widow and minor children and other creditors. **Hudgins**, 116/273, 42 S. E. 489.

Executor and heir, creditors can attack collusive arrangement between, to subject property. **Webb**, 142/422, 424, 83 S. E. 99.

Attempt *mala fide* to probate pretended will, no allowance of expense for. **Davison**, 140/707, 79 S. E. 855.

Collusion by, with buyer at private sale, and withdrawal of land after bids for it at public sale, open to inquiry by legatees and creditors, but not by bidder, though he were misled into buying other parcels. **Tillman**, 114/406, 40 S. E. 244, 57 L. R. A. 784, 88 Am. St. R. 28.

Collusive agreement by, with creditor, as cause for equitable action by legatees. **Home Mixture Guano Co.**, 148/567, 97 S. E. 637.

Fraud of, in procuring order for sale of realty, not apparent. **Johnson**, 136/554, 71 S. E. 874.

Purchase by, of legatee's interest, grounds for setting aside. **Collier**, 137/658, 74 S. E. 275, Ann. Cas. 1913A. 1110.

Sale by, grounds of attack on, by heirs. **Livingston**, 132/3, 63 S. E. 694.

Facts insufficient to show fraud, in taking note. **Vanzant**, 2 A. 763, 59 S. E. 85.

Not conclusions, must be pleaded. **Tolbert**, 101/741, 28 S. E. 991.

Not making case of moral fraud. **Anderson** 112/271, 37 S. E. 426.

Failure of sole heir at law to perform his oral promise to decedent, that he would dispose of her estate as she de-

sired, when not fraudulent. **Cassels**, 122/33, 49 S. E. 749, 68 L. R. A. 80, 106 Am. St. R. 91, 2 Ann. Cas. 554.

"False representation" defined; may be made by act, silence, or symbol. **Ricks**, 8 A. 449, 453, 69 S. E. 576. Made by omitting to fill in answer, in printed form as to financial condition. *Ib.*

May consist in purchasing without intending to pay and in contemplation of fraudulent insolvency. **Atlanta Skirt Mfg. Co.**, 8 A. 299, 68 S. E. 1077.

No deceit by, to him who knows of the falsity. **Griffin**, 130/527, 61 S. E. 16, 16 L. R. A. (N. S.) 937, 14 Ann. Cas. 866.

Of employer, causing employee to incur danger. **Beard**, 8 A. 618, 70 S. E. 57.

As to solvency; meaning of "solvency." **Christian**, 8 A. 371, 69 S. E. 29.

Sufficient plea as to. **Owens**, 8 A. 221, 68 S. E. 1009.

Statement not fraudulent when there is no reason why it should be believed and acted on. **Branan**, 3 A. 586, 60 S. E. 325.

False writing uttered as true, with intent to defraud, penal. **McLean**, 3 A. 660, 60 S. E. 332.

Forgery and uttering false writing. **Hale**, 120/184, 47 S. E. 531. Forgery, uttering and publishing. **Jordan**, 127/278, 56 S. E. 422. See **Criminal Law**.

Of deed; cancellation. **Smith**, 139/10, 76 S. E. 362.

Of draft, loss by, fell on bank that cashed it, rather than on drawee who paid it, under mistake and without negligence. **Woods**, 114/685, 40 S. E. 720, 56 L. R. A. 929.

Garnishment of fraudulent transferee. **Stovall Co.**, 10 A. 500, 73 S. E. 761.

Gift, burden of proof of fraud as to. **Philpot**, 3 A. 742, 60 S. E. 480. See **Nation**, 3 A. 85, 59 S. E. 330.

By husband to wife, presumption against, in favor of subsequent purchaser, how rebutted. **Smith**, 2 A. 144, 58 S. E. 303.

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By insolvent debtor to wife, void as to existing creditors, though no purpose to defraud them. *Lane*, 140/415, 78 S. E. 1082.

Of land by husband to wife not set aside for fraud, though she afterward falsely cast him off. *Jackson*, 146/675, 92 S. E. 65.

Of services by insolvent debtor, no fraud on creditors. *Brand*, 133/750, 66 S. E. 935.

Goods sold, misrepresentations of cost price of, not proved. *Underwood*, 102/16, 29 S. E. 164.

Guardian, purchase of land by one who afterwards became, did not give ward right of action. *Brannan*, 146/528, 91 S. E. 772.

Concealment by, in settling with ward during minority. Duty of diligence after reaching majority. *Bennett*, 139/27, 76 S. E. 568.

Concealment or failure to disclose facts to ward. *Short*, 107/810, 33 S. E. 694.

Sale and resale of ward's property by, issue of fraud in. *Little*, 145/563, 89 S. E. 682.

Head of family, conveyance to, in fraud of creditors. *Kiser*, 102/429, 30 S. E. 967, 66 Am. St. R. 184.

Headright pending, fraudulent grant obtained by caveator not set aside on scire facias. *Calhoun*, 104/335, 30 S. E. 773.

Horse sold, allegations of fraud in representations as to, were no defense against note for price. *Purser*, 142/836, 83 S. E. 958.

Swap, repudiation of, must be based on actual fraud. *Dunn*, 143/376, 85 S. E. 100.

Swap rescinded for, not for breach of warranty. *Fudge*, 4 A. 630, 62 S. E. 96.

Swap, trover by defrauded party. *Johnson*, 121/83, 48 S. E. 685.

Trade, fraud in. *Metcalf Live Stock Co.*, 23 A. 690, 99 S. E. 230. As defense to note. *Owens*, 8 A. 221, 68 S. E. 1009; *Mizell Live Stock Co.*, 10 A. 362, 73 S. E. 410. Transaction

not authorizing conviction of cheating and swindling. *Odum*, 10 A. 27, 72 S. E. 511.

Husband and wife, transaction between. *Gray*, 139/776, 78 S. E. 127; *Taylor*, 139/797, 77 S. E. 1062. Burden of proof as to fairness of transaction attacked for fraud. *Gray*, 139/776, 78 S. E. 127; *Pulliam*, 142/523, 83 S. E. 121.

Contract of, with wife should be closely scrutinized; evidence insufficient to show fraud on wife here. *Sumner*, 121/6, 48 S. E. 727.

Conveyance by, to wife, to pay debt with compound interest, when void as to creditors. *Hollis*, 106/15, 31 S. E. 783.

Creditor of, on faith of his apparent ownership of land did not have to prove that claimant (wife) was party to fraud. *Dill*, 118/210, 44 S. E. 989.

Gift by, to wife, as conveyance by insolvent debtor to defeat creditors; no legal presumption. *Varn*, 137/300, 73 S. E. 507.

Ignorance or bad judgment of party, no reason to set aside contract for fraud, here. *Sumner*, 121/6, 48 S. E. 727.

Of party. *Talley*, 6 A. 482, 65 S. E. 256.

As to contents of paper, on the part of one induced by fraud to sign it, not excusable here. *Towns*, 16 A. 300, 85 S. E. 274.

Not avail party deceived, when. *Sloan*, 20 A. 123, 92 S. E. 893; *Hanes*, 20 A. 129, 92 S. E. 896; *Miller*, 23 A. 273, 97 S. E. 869.

Illiterate person induced to sign writing by misrepresentations of its nature or contents, not bound. *Grimsley*, 133/56, 65 S. E. 92, 134 Am. St. R. 196.

Procuring signing of deed by. *Kent*, 142/49, 82 S. E. 440.

Inadequacy of price at sale, if great, is strong circumstance to evidence fraud. *Oswald*, 140/62, 78 S. E. 333, Ann. Cas. 1914D, 1.

Incumbered property, fraud in sale of. *Fudge*, 6 A. 5, 64 S. E. 316; *Painter*, 6 A. 54, 64 S. E. 129.

Indicia of fraud, not apparent from mere relationship of parties to deed. *Hatcher*, 142/193, 82 S. E. 513.

Indorsement "without recourse," accepted without knowing of its legal effect, no basis for allegation of fraud. *Baker*, 144/502, 87 S. E. 659.

Obtained by fraud; plea insufficient.

Hollingshead, 104/250, 30 S. E. 728.

Infringement of name of fraternal and insurance order by separate association, injunction against. *Creswill*, 133/837, 67 S. E. 188, 134 Am. St. R. 231, 18 Ann. Cas. 453.

Inheritance, conspiracy to deprive of, by obtaining administration and selling; recovery of damages. *McWilliams*, 143/139, 84 S. E. 557.

Injunction and appointment of receiver of assets, on account of fraud. *Moody*, 133/741, 66 S. E. 908.

Injury must coexist with fraud, to invalidate written contract; injury to purchaser shown, though the evidence was silent as to actual value. *Washington Post Co.*, 7 A. 776, 68 S. E. 337.

Necessary, to authorize recovery for fraud. *Peoples*, 18 A. 376, 89 S. E. 461.

To person or to property; action of deceit classified. *Crawford*, 134/114, 67 S. E. 673, 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932.

Innocent persons, of two, he suffers who empowers wrong-doer. Applied to broker's pledge of bill of lading indorsed in blank. *Commercial Bank*, 120/77, 47 S. E. 589, 65 L. R. A. 443.

Innocent purchaser from fraudulent grantee, protected. *Beasley*, 144/380, 87 S. E. 293.

In pari delicto, courts will not aid parties who are. *Castellow*, 119/461, 46 S. E. 632.

Inquiry, duty of, on part of one to whom representation is made. *Miller*, 9 A. 511, 71 S. E. 927.

Insurance against fire, when not avoided by overstatements of losses and false testimony by insured. *Goldberg*, 144/784, 87 S. E. 1077.

Agent's fraud, in dealing with policy holder. *Hart*, 117/590, 43 S. E. 998.

Certificate, change of beneficiary in, procured by false representation; liability. *Mitchell*, 143/827, 85 S. E. 1050, Ann. Cas. 1917A, 469.

Code definitions were not pertinent to the facts. *Goldberg*, 144/784, 87 S. E. 1077.

Effect of material misrepresentation in application for policy of. *Supreme Lodge*, 138/779, 785, 76 S. E. 91.

Effect of untrue representations in application for. *Torbert*, 141/773, 82 S. E. 134.

Misrepresentation of contents of application for, when no defense to premium on note. *Shedden*, 110/461, 35 S. E. 707.

Misrepresentation in application for, when voids the policy. *Fox*, 124/950, 53 S. E. 271.

Misrepresentations as affecting. *Mass. Ben. Assn.*, 104/256, 30 S. E. 918, 42 L. R. A. 261.

Material misrepresentations in application for; issue of fact. *Inter-Southern Ins. Co.*, 148/233, 237, 96 S. E. 424.

Money paid, what showing necessary to recover, from insured. *Rome Co.*, 110/618, 36 S. E. 63.

Policy, admissibility of application for, on issue of fraud in procuring. *Fraternal Life Assn.*, 140/284, 78 S. E. 915.

Policy, assignment or transfer of, procured by agent of insurer from administratrix of insured; equitable relief. *Empire Ins. Co.*, 140/141, 78 S. E. 935; *Whitehurst*, 140/148, 78 S. E. 938.

Policy, defense to action on, without repaying or tendering amount received as premium. *Columbian Ins. Co.*, 146/267, 91 S. E. 106.

Policy, false statements and misrepresentations in application for. *Ger*, 615.

Policy, fraud in procuring, by false statements of age, health, etc. *Johnson*, 134/800, 68 S. E. 731.

Policy issued, which was void; declaration seeking damages insufficient. *Tolbert*, 101/741, 28 S. E. 991.

Policy, misrepresentations to procure. *Rosser*, 101/716, 29 S. E. 286.

Policy, misrepresentations to procure; burden of proof. *O'Connell*, 102/147, 28 S. E. 282, 66 Am. St. R. 159.

Policy obtained by misstatements of applicant, when void. *N. W. Ins. Co.*, 116/799, 43 S. E. 79.

Policy, whether stipulation of, was wrongfully inserted. *Ga. Home Co.*, 102/106, 29 S. E. 148.

Settlement induced by statements of adjuster, when no cause of action. *Howard*, 102/137, 29 S. E. 143.

Solicitor's misrepresentations, when not available as defense against note taken for premium on policy. *Johnson*, 120/1010, 48 S. E. 426.

Untruth of statements of applicant for; issue of fact as to materiality. *Connecticut Ins. Co.*, 142/358, 82 S. E. 1054.

Intent essential. *Ager*, 2 A. 158, 58 S. E. 374; *Crawford*, 2 A. 188, 58 S. E. 301; *Mosely*, 2 A. 191, 58 S. E. 298; *Kellam*, 2 A. 480, 58 S. E. 695.

Allegations as to, considered on demurrer. *American National Bank*, 131/861, 63 S. E. 622, 21 L. R. A. (N. S.) 962.

Burden of proof to rebut presumption of, when raised by proof of certain facts. *Barnes*, 3 A. 333, 59 S. E. 937.

Not to pay for goods, evidence tending to show. *Fountain*, 144/550, 87 S. E. 651.

Of person charged with fraud. Compare *Finney*, 116/759, 42 S. E. 1020, and *N. W. Ins. Co.*, 116/799, 43 S. E. 79.

To defraud is matter of fact; not to be presumed against party, as matter of law, from his pleading. Dissent in *Tune*, 131/534, 62 S. E. 976.

Where jury could properly make but one finding as to. *N. W. Ins. Co.*, 116/809, 43 S. E. 79.

No precedent fraudulent representation of, implied by subsequent abandon-

ment. *City of Atlanta*, 135/376, 69 S. E. 571.

Prima facie evidence of. *Smith*, 141/482, 81 S. E. 220, Ann. Cas. 1915C, 999.

To deceive and defraud, sufficiently charged by allegation that representations were "fraudulently" made. *Isaacs*, 7 A. 799, 68 S. E. 338.

Allegation as to, sufficient. *Campbell*, 121/167, 48 S. E. 920.

Express reference to, not necessary in charge to jury, where terms used implied such intent ("fraudulent conversion"). *Hagood*, 5 A. 87, 62 S. E. 641.

Facts showing lack of. *Rickerson*, 3 A. 443, 60 S. E. 114; *Young*, 3 A. 463, 60 S. E. 117.

Inferable from circumstances. *Lane*, 140/415, 78 S. E. 1082.

Presumptive evidence of, may be rebutted by evidence as a whole. *Mulkey*, 1 A. 522, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284.

When conclusively presumed by law. *Jordan*, 127/278, 56 S. E. 422.

Issue as to fraud, raised in motion for new trial, but not in pleadings, not passed upon. *Sunlight Ins. Co.*, 17 A. 710, 88 S. E. 590.

Of fraud in transfer by defendant in execution to claimant, is for decision of jury, not judge. *Kelley*, 138/186, 75 S. E. 6.

Not raised without pleading and evidence. *Skinner*, 142/405, 408, 83 S. E. 121.

Settled by verdict under due submission by charge to jury. *Boyd*, 127/358, 56 S. E. 420.

Joinder of resident defendant to prevent removal of cause to U. S. court, alleged to be fraudulent. *L. & N. R. Co.*, 136/270, 71 S. E. 425.

Judgment or order attacked for fraud, in equity, without proceeding to set aside. *Empire Ins. Co.*, 140/142, 78 S. E. 935.

Against principal, impeachable by surety, for fraud. *Price*, 121/18, 48 S. E. 721, 68 L. R. A. 736.

Judgment—(Continued).

Collusive, foreclosing lien, another lienholder may attack, how. *Dixon*, 103/710, 30 S. E. 690.

Collusive, subject to attack in equitable proceeding to which one whose property was affected by it, and the plaintiff in the judgment, were parties. *Wilson*, 115/474, 41 S. E. 629.

Demurrable petition to set aside, for fraud. *Shipp*, 147/711, 95 S. E. 251.

For wife against husband, attacked as collusive because her attorney wrote his answer admitting her allegations, and wrote consent on his part for trial at first term. *Sackett*, 115/468, 41 S. E. 564.

Fraud as ground for vacating; and when such as to deter movant from proceeding. *Gwinn*, 145/481, 89 S. E. 574.

Granting administrator leave to sell land, when not vacated for untrue representation. *Fordham*, 147/610, 95 S. E. 3.

Not set aside for alleged collusion of of defendant's agent with plaintiff. *Great Eastern Casualty Co.*, 147/119, 92 S. E. 939.

Not set aside for fraud, on petition of party to illegal scheme, and in laches. *Bank of Doerun*, 148/799, 98 S. E. 467.

Set aside for fraud, by courts of law and of equity. *Anderson*, 147/455, 94 S. E. 574, L. R. A. 1918B, 894; *Albright*, 147/492, 94 S. E. 561; *Ellis*, 147/609, 95 S. E. 4. See *Shipp*, 147/711, 95 S. E. 251.

May in equity be set aside for fraud. *Jones*, 120/642, 646, 48 S. E. 184.

Not collaterally attacked for fraud, as general rule. Exception in case of provision in divorce decree. *Milner*, 143/816, 85 S. E. 1045, L. R. A. 1916B, 977. See *Hood*, 143/616, 85 S. E. 849.

Not set aside on general allegation of procurement by fraud. *Mobley*, 144/44, 87 S. E. 470.

Obtained by fraud; allegations not supported by evidence here. *Neal*, 132/400, 64 S. E. 480.

Judgment—(Continued).

Obtained by fraud, in court of ordinary, may be set aside, without moving in court where rendered. *Lester*, 144/143, 86 S. E. 321.

Obtained by fraud, injunction against. *Ga. Ry. Co.*, 122/687, 51 S. E. 15.

Obtained by fraud, not set aside after three years. *Field*, 124/685, 52 S. E. 885; *Summerlin*, 124/980, 53 S. E. 452.

Obtained by fraud; refusal of equitable relief for delay of movant. *Beeland*, 145/842, 90 S. E. 46.

Obtained by fraud, set aside on motion with proper pleadings; as, where execution had been discharged, but was proceeding as a subsisting lien. *Warthen*, 132/115, 63 S. E. 832, 131 Am. St. R. 184.

Obtained by fraud, when set aside. *Johnson*, 108/599, 34 S. E. 158.

Of court of general jurisdiction, when not subject to collateral attack for fraud. *Bowen*, 144/1, 85 S. E. 1007.

Probating nuncupative will obtained by fraud, not set aside without proper parties. *Bullard*, 134/636, 68 S. E. 439.

Probating will, when subject to attack for fraud. *Davis*, 127/517, 56 S. E. 514, 8 L. R. A. (N. S.) 820, 119 Am. St. R. 352.

Procured by fraud, affidavit of illegality not remedy. *Ray*, 107/771, 33 S. E. 692.

Procured by fraud, allegations as to, too general. *Coleman*, 113/149, 38 S. E. 400. See *Williams*, 113/1020, 39 S. E. 471. May be collaterally attacked in any court. *Ib.*

Procured by fraudulent representation by plaintiff that he had abandoned case, causing defendants to omit making defense, set aside. *Dodge*, 107/410, 33 S. E. 468.

Procured in suit against trustee to charge trust estate with his personal debt, fraudulent. *Snelling*, 107/852, 33 S. E. 634, 73 Am. St. R. 160.

Relief against, where defendant with meritorious defense has been prevented

by fraud from entering appeal or making motion for new trial. *Everett*, 119/128, 46 S. E. 72.

Set aside for fraud in procuring acknowledgment of service of bill of exceptions. *Wade*, 133/608, 66 S. E. 922.

Set aside for fraud, in equity. *Giles*, 146/437, 91 S. E. 411.

Set aside for omission of one party to advise justice of agreement to continue case, other party being absent. *Southern Ry. Co.*, 134/527, 68 S. E. 95.

Set aside for fraud, when. *Southern R. Co.*, 103/541, 29 S. E. 761.

Taken in violation of agreement with defendant may be set aside for fraud. Allegations sufficient. *Beverly*, 142/834, 83 S. E. 942.

Vacated where fraud prevented filing of defense. *Moore*, 139/597, 77 S. E. 820.

Judicial sale, ground for setting aside. *Southern Cotton Mills*, 138/504, 75 S. E. 611.

Jurisdiction of action for fraudulently removing property subject to lien; justice's court has none. *Dorsey*, 105/88, 31 S. E. 736.

Jury, issue for, as to bona fides of transaction. *Cowart*, 101/4, 29 S. E. 270.

Knowledge of law not imputed to prosecutor to shield false pretender. *Ryan*, 104/83, 30 S. E. 678.

Of worthlessness of thing sold, not sufficient to constitute fraud on part of seller. *Seawright*, 16 A. 443, 85 S. E. 625.

Labor-contract law constitutional, save as to rule of evidence in second section. *Latson*, 136/681, 71 S. E. 1052.

Latches as bar to relief against fraud. *Bryan*, 138/321, 75 S. E. 205; *Wilkes*, 120/728, 48 S. E. 113. Not shown. *Rigell*, 142/357, 82 S. E. 1057.

No effort to discover falsity of representations, as affecting action. *Fenley*, 104/792, 30 S. E. 1002.

Land and personalty, misrepresentation of quality in sale of; remedies available to vendee. *Couch*, 142/22, 82 S. E. 459.

Exchanged, recovery on account of shortage in acreage as represented; evidence not sufficient. *Powell*, 138/397, 75 S. E. 318.

Grant procured by misrepresentations, not collaterally attacked. *Houston*, 124/420, 52 S. E. 757.

Purchase induced by false statements as to easements and appurtenances, as basis of action for deceit. *Fenley*, 104/792, 30 S. E. 1002.

Evidence did not show actual fraud of buyer as to measurement of frontage. *Hammond*, 140/259, 263, 78 S. E. 897.

Misrepresentation of number of acres, not heard in defense to contract for entire tract. *Maxwell*, 101/55, 28 S. E. 672.

Sale by the tract; deficiency in acres covered by "more or less;" and no apportionment of price, if no intentional fraud. *Finney*, 116/758, 42 S. E. 1020.

Sold by tract, acres stated as "more or less," no recovery for deficiency, without wilful deception, or mistake amounting to fraud. *Blackmon*, 136/165, 71 S. E. 139; *Currie*, 136/473, 71 S. E. 798; *Morehead*, 136/488, 71 S. E. 798; *King Lumber Co.*, 136/739, 72 S. E. 37.

Second conveyance of, by same vendor, a cause of action ex delicto for damages suffered. *McLendon*, 2 A. 421, 58 S. E. 690.

Landlord's remedy upon conveyance of property by tenant to defeat collection of rent. *Helmken*, 138/200, 75 S. E. 3.

Lease procured by imposition on lessors who were mentally incapable of contracting; variance in allegations and proof. *Barlow*, 120/1015, 48 S. E. 344.

Levy and sale under mortgage *fi. fa.*, when not set aside for inadequacy of price bid, etc. *Howland*, 141/687, 694, 92 S. E. 32.

Excessive, is fraud on defendant. *Hobbs*, 106/403, 32 S. E. 351.

Grossly excessive, a fraud in law. *Forbes*, 102/49, 28 S. E. 915, 66 Am. St. R. 152.

Limitation bar not avoided by fraud, unless moral turpitude involved, and plaintiff be thereby deterred from action. *Anderson*, 112/270, 37 S. E. 426.

Bar by statute of, or contractual limitation; fraud which prevents bar from attaching must involve moral turpitude. *Cherokee Sawmill Co.*, 19 A. 475, 91 S. E. 790.

Bar of statute of, mere constructive fraud will not prevent. *Maxwell*, 117/467, 43 S. E. 704.

Bar of, prevented by conduct such as to deter plaintiff from proceeding. *Gwinn*, 145/481, 89 S. E. 574.

Bar of, when not prevented by fraud. *Wicker*, 126/119, 54 S. E. 821.

Bar prevented by fraud, when. *Short*, 107/807, 33 S. E. 694.

No bar by, applied to this suit on account of money entrusted and misapplied. *Brock*, 132/23, 63 S. E. 794.

Of action against persons who misappropriated funds received from executrix. *Gaskin*, 145/376, 89 S. E. 337.

Of action for damages from misrepresentation and concealment, four years. *Frost*, 144/26, 85 S. E. 1028.

Of action for false representation inducing taking of forged note. *Small*, 102/248, 29 S. E. 430.

Of action for fraud; time not delayed until discovery of, if discoverable sooner by ordinary diligence; allegations insufficient to arrest bar. *Garbutt Lumber Co.*, 6 A. 189, 4 S. E. 698.

Of action for fraud; what statute applies. *Crawford*, 134/114, 67 S. E. 673. 28 L. R. A. (N. S.) 353, 19 Ann. Cas. 932.

Of action or defense as affected by fraud; ordinary diligence required. *Mass. Ben. Assn.*, 104/272, 30 S. E. 918, 42 L. R. A. 261.

No allegation of fraud preventing bar. *Slay*, 145/774, 89 S. E. 830.

Of action to set aside decree obtained by fraud, except as to minors. *Biggam*, 114/458, 40 S. E. 303.

Statute runs from time damage occurs. *Harris*, 144/519, 87 S. E. 661.

Silence of petition as to time of discovery of fraud, considered in sustaining demurrer. *Lee*, 119/49, 45 S. E. 689.

Period begins from discovery of fraud. Duty of diligence, even where relation of trust and confidence. *Bennett*, 139/27, 76 S. E. 568.

Bar not removed, if fraud discoverable by ordinary diligence (location of land bought). *Little*, 101/594, 28 S. E. 919.

Statute of, applied where no allegation of time when fraud discovered. *Waters*, 124/349, 52 S. E. 425.

Statute of, when tolled by omission to disclose facts showing breach of trust. *American National Bank*, 131/854, 63 S. E. 622, 21 L. R. A. (N. S.) 962.

Statute, how affected by fraud. *Reid*, 102/189, 29 S. E. 173, 66 Am. St. R. 164; *Irvin*, 18 A. 662, 90 S. E. 359; *L. & N. R. Co.*, 18 A. 84, 88 S. E. 905; *Haden*, 20 A. 317, 93 S. E. 36; *Southern Express Co.*, 20 A. 467, 93 S. E. 109.

Bar of, a circumstance for consideration, on issue as to fraud in conveyance to pay debt. *Lane*, 145/810, 89 S. E. 1083.

Loss should fall on party whose act gives opportunity for fraud (wife and husband). *Farmers Bank*, 2 A. 839, 59 S. E. 193.

Lost original note sued on, correct copy attached as exhibit, proved by parol. *Haug*, 101/372, 29 S. E. 44, 40 L. R. A. 244.

Machinery sold under alleged false representations of its quality. *Malsby*, 104/205, 30 S. E. 854.

Married woman, colorable schemes of fraud as to. *Central Bank*, 135/231, 69 S. E. 111; *Parrott*, 135/330, 332, 69 S. E. 552; *Gaskins*, 135/368, 69 S. E. 476.

Mental disparity coupled with inadequate consideration as amounting to fraud; finding not reversed. *Cowart*, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Minor coplaintiffs affected by, from misrepresentation of defendant to major

plaintiff. *Bigham*, 114/457, 40 S. E. 303.

Misjoinder of parties defendant to action for fraud. *Bagwell*, 116/464, 42 S. E. 732.

Misleading conduct of vendor in sale of property. *Haltiwanger*, 103/316, 29 S. E. 965.

Misrepresentation, or failure to state facts, as affecting validity of insurance policy. *Loflin*, 9 A. 80, 70 S. E. 353; *Grand Lodge*, 9 A. 80, 70 S. E. 678.

Allegation as to, too general. *Groves*, 5 A. 160, 62 S. E. 731.

Amounting to mere opinion, no ground for rescission. *Walker*, 14 A. 803, 82 S. E. 355.

As to age of horse; good plea. *Mizell Live Stock Co.*, 10 A. 362, 73 S. E. 410.

As to contents of contract, as defense to suit on the contract. *Thomason*, 9 A. 349, 71 S. E. 596.

As to contents of note, causing one to sign, when no defense. *Tracy*, 5 A. 392, 63 S. E. 233; *Potts*, 5 A. 385, 63 S. E. 253.

As to contents of writing, causing illiterate person to sign it with his mark. *Spikes*, 11 A. 180, 74 S. E. 1003.

As to land sold. *Mobley*, 13 A. 484, 79 S. E. 372.

As to liability, when not fraudulent. *Jones*, 13 A. 390, 79 S. E. 239.

As to non-existence of lien may be criminal though the lien be recorded. *Brown*, 6 A. 329, 64 S. E. 1001.

As to title. *Kennedy*, 14 A. 644, 82 S. E. 155.

As to title, as ground for recovery of money paid on contract for option to purchase land, expense of investigating title, etc. *O'Neal*, 9 A. 180, 70 S. E. 971.

As to value, when not such fraud as to avoid sale. *Cocoa-Cola Bottling Co.*, 13 A. 775, 80 S. E. 32.

Causing one to sign a note, apparently as maker, under belief that he was signing as witness, a good defense here. *Barco*, 5 A. 372, 63 S. E. 224.

Causing party to sign contract without reading. *Chandler-Blackstad Co.*,

10 A. 383, 73 S. E. 413; *Patapsco Shoe Co.*, 10 A. 675, 74 S. E. 60. No defense here. *Miller*, 23 A. 273, 97 S. E. 869. See *Sales*.

Conduct and language constituting. *Marietta Fertilizer Co.*, 4 A. 245, 248, 61 S. E. 149.

Constituting fraud, though not so denominated in pleading. *Pollock*, 15 A. 6, 82 S. E. 381.

Deceived party negligent in not using opportunity to discover facts. *Miller*, 9 A. 511, 71 S. E. 927.

Fraudulent, inducing written contract; admissibility of parol proof as to. *Loyless*, 10 A. 660, 74 S. E. 90.

Fraudulent, not shown by allegations here. *L. & N. R. Co.*, 129/234, 236, 58 S. E. 706.

In application for life insurance. *Ætna Life Ins. Co.*, 11 A. 557, 75 S. E. 915.

In horse trade, plea as to, not good. *Boswell*, 5 A. 252, 62 S. E. 1003.

Intent to defraud, implied from allegation that representation was fraudulent. *Crawford*, 4 A. 796, 62 S. E. 501.

Intimacy not amounting to confidential relations which would dispense with ordinary caution in relying on representation. *Boykin*, 14 A. 666, 82 S. E. 60.

Not fraudulent, when there is no reason for believing and acting on statement. *Harrison*, 13 A. 346, 79 S. E. 211. Misrepresentation as to animal sold. *Ib.*

Not shown to have deceived, in sale of horse with patent defect, not authorize conviction of cheating and swindling. *Odum*, 10 A. 27, 72 S. E. 511.

Of contents of contract, made to illiterate purchaser of machinery, as defense to suit for purchase-price. *Gore*, 110/894, 36 S. E. 315.

Of material facts, good defense here. *House*, 125/644, 54 S. E. 735.

Of number of acres, not heard in defense to contract for purchase of land. *Maxwell*, 101/55, 28 S. E. 672.

Pending negotiations for sale, defense of, concluded by express contract. *Floyd*, 110/850, 36 S. E. 225.

Misrepresentation—(Continued).

Plea as to, too general. *City of Moultrie*, 6 A. 464, 469, 65 S. E. 315.

What necessary, to constitute fraud. *Sasser*, 6 A. 321, 4 S. E. 1100. See *Garbutt Lumber Co.*, A. 189, 64 S. E. 698. See *Camp*, 6 A. 608, 65 S. E. 583.

Whether purchaser was entitled to rely on representation of seller, after contrary statement of a third person. *Mizell Live Stock Co.*, 10 A. 365, 73 S. E. 410.

Mistake amounting to fraud, in land sale. *Owens*, 9 A. 179, 70 S. E. 989. See *Milner*, 9 A. 659, 71 S. E. 1123.

Of law as to validity of tax sale does charge prescriber with fraud. *Bower*, 126/35, 54 S. E. 918.

Moral perceptions of individual, legal intent not measured by. *Monroe Co.*, 108/458, 34 S. E. 176.

Moral turpitude, decision on demurrer rested on allegations that acts involved. *American National Bank*, 131/861, 63 S. E. 622, 21 L. R. A. (N. S.) 962.

Mortgaged property, removal and concealment of, damages for. *Reid*, 102/189, 29 S. E. 173, 66 Am. St. R. 164.

Mortgagor's misrepresentation as to land containing machine-shop. *Carter*, 104/576, 31 S. E. 407.

Motive due to misrepresentation, no ground for rescission, when. *Washington Post Co.*, 7 A. 775, 68 S. E. 337.

Municipal action not shown fraudulent by allegation of falsity known to councilmen who introduced ordinance. *Wallace*, 140/649, 79 S. E. 554. Facts held not to show legal fraud as to municipal street assessment, on owners of property. *Burns*, 148/549, 97 S. E. 536.

Mutual agency, agreement to assume. *Ramspeck*, 104/776, 30 S. E. 962, 42 L. R. A. 197, 69 Am. St. R. 197.

Negligence, allegations not sufficient to excuse. *Frost*, 144/26, 85 S. E. 1028.

In not reading contract and in relying on representations prevented defense that fraud induced signing. *Sloan*, 20 A. 123, 92 S. E. 893; *Hanes*, 20 A. 129, 92 S. E. 896.

Of movant as ground for refusing equitable relief on account of fraud.

Beeland, 145/842, 90 S. E. 46. Omission to defend against suit. *Conklin*, 148/640, 98 S. E. 221.

Of party deceived, as affecting right to complain of fraud. *Thomason*, 9 A. 349, 71 S. E. 596; *Miller*, 9 A. 511, 71 S. E. 927; *Patapsco Shoe Co.*, 10 A. 677, 74 S. E. 60; *Marietta Fertilizer Co.*, 4 A. 249, 252, 61 S. E. 149. As affecting criminality. *Crawford*, 4 A. 796, 62 S. E. 501.

In failure to read paper before signing, as answer to plea of misrepresentations. *Chicago Blg. Co.*, 101/820, 29 S. E. 291.

Negotiable paper fraudulently procured and negotiated to innocent purchaser who compels payment, damages recoverable. *Jones*, 107/318, 33 S. E. 51, 45 L. R. A. 105.

Note altered by principal before negotiation, discharges surety. *Hill*, 101/832, 28 S. E. 996.

Discount of, to be kept secret by agreement, no such fraud as to warrant maker in paying the amount of it to the payee without its surrender. *Tuck*, 108/446, 33 S. E. 983, 75 Am. St. R. 69.

For price of bank stock; issue of fraud in representations of bank's officers. *Brown Bank & Co.*, 143/52, 84 S. E. 183.

For price of horse obtained by fraud, as defense against indorsee. *Fidelity Co.*, 142/821, 83 S. E. 961. No defense. *Purser*, 142/836, 83 S. E. 958.

In renewal procured by false statement; defense good. *Phillips*, 144/850, 88 S. E. 195.

Obtained by fraud, shown by parol. *Crooker*, 3 A. 190, 59 S. E. 722.

Procured by fraud and fraudulently altered, sufficiency of allegations in petition for cancellation of. *Armstrong*, 105/229, 31 S. E. 158.

Procured by false representations of value of stock, etc.; pleas demurrable. *Brooks*, 1 A. 65, 57 S. E. 1093.

Procured by fraud, plea as to, good, as against demurrer here. *Farkas*, 119/515, 46 S. E. 670.

Procured by fraud; defense prevailed. *Martin*, 136/228, 71 S. E. 133.

Meaning of code as to "fraud in the procurement of." *Hancock*, 17 A. 180, 86 S. E. 434; *Citizens Bkg. Co.*, 17 A. 692, 87 S. E. 1098; *Edwards*, 144/515, 87 S. E. 675.

Obtained by fraud, no defense as against transferee in good faith, before maturity, for value, and without notice. *Walter*, 110/776, 36 S. E. 79; *Bank of Lavonia*, 140/594, 79 S. E. 459.

Obtained by fraud; when defense unavailable. *Pursley*, 122/362, 50 S. E. 139; *Pritchard*, 122/606, 50 S. E. 366; *Morrison*, 122/660, 50 S. E. 471; *Wilensky*, 122/664, 50 S. E. 472; *Bond*, 122/812, 50 S. E. 934.

Parol evidence admissible that defendant was induced to sign, by fraud practiced. *Brown*, 136/584, 71 S. E. 802.

Right to rescind purchase of, because of holder's failure to disclose facts affecting its value. *Marietta Fertilizer Co.*, 4 A. 245, 61 S. E. 149.

Signed without reading it; no actual fraud of payee's agent proved. *Walton Guano Co.*, 112/319, 37 S. E. 411, 52 L. R. A. 268.

Notice constructive, of fraud in obtaining decree, not afforded by matters of record here. *McMillan*, 109/700, 35 S. E. 102.

From which fraud presumed is actual, not constructive. *Isler*, 134/192, 197, 67 S. E. 854.

Of fraud; facts sufficient to put on inquiry. *Empire Ins. Co.*, 140/142, 78 S. E. 935.

Of misrepresentations inducing sale of stock, evidence not sufficient to show, to buyer of note. *Heard*, 143/48, 84 S. E. 129.

One fraud will not justify another. *Tuttle*, 134/332, 67 S. E. 806, 20 Ann. Cas. 168.

Opinion of what is proved as a badge of fraud, error in expressing, in hearing of jury. *Moss*, 147/311, 93 S. E. 875.

Opportunity for discovery of facts, proper charge to jury as to. *Gordon*, 19 A. 796, 92 S. E. 290.

To discover facts, and failure to inquire, ground for denying relief, when. *Miller*, 9 A. 511, 71 S. E. 927.

To discover facts, or procure attorney's assistance, wanting, by reason of haste, at time of signing contract; effect of. *Potts*, 5 A. 385, 63 S. E. 253. Haste of other party to catch train. *Patapasco Shoe Co.*, 10 A. 675, 74 S. E. 60; *Marietta Fertilizer Co.*, 4 A. 245, 61 S. E. 149.

Ownership, claim and acts of, as evidence of good faith. *Sackett*, 115/468, 41 S. E. 564.

Parent's conveyance of land induced by, sons could not maintain action to set aside. *Moss*, 146/686, 92 S. E. 213.

Parol agreement before written contract sued on, when not admissible. *Harris*, 135/131, 68 S. E. 1040.

Parol evidence as to misrepresentation of contents of contract, admissible, when. *Thomason*, 9 A. 349, 71 S. E. 596.

To prove fraud, admissible. *Pryor*, 134/289, 67 S. E. 654, 28 L. R. A. (N. S.) 267; *Pavlovski*, 134/704, 705, 68 S. E. 511; *Jones*, 134/857, 68 S. E. 729, 137 Am. St. R. 276.

To show fraud, when admissible in defense against contract in writing. *Chicago Building & C. Co.*, 139/816, 78 S. E. 244.

Particulars constituting, demurrer for want of, not good, where allegation of fraud irrelevant. *Boynton*, 112/354, 37 S. E. 437.

Partition, fraud in obtaining deed as defense to application for. *Mize*, 138/499, 75 S. E. 629.

Partner (former), fraudulent acts of, when inadmissible against debtor to show fraud in subsequent conveyance. *Hobbs*, 103/1, 30 S. E. 257.

Partnership assets, acquired by corporation organized by partner who bought interest of copartner; non-liability to creditors of partnership. *Greenberg-Miller Co.*, 138/729, 75 S. E. 1120.

Pretended; when a fraud. *Bank of Lawrenceville*, 129/582, 585, 59 S. E. 291.

Pending suit unknown to grantee, when no notice of fraudulent intent. *Cowart*, 101/4, 29 S. E. 270.

Plea alleging fraud not sufficient, if allegation general without specifying wherein fraud consisted. *Stoddard Co.*, 122/802, 50 S. E. 915.

No sufficient allegation of fraud. *Morgan*, 137/548, 73 S. E. 844; *Branan*, 3 A. 587, 60 S. E. 325. Plea good here. *Williams*, 3 A. 756, 60 S. E. 372.

Of fraud, bad for want of specific allegations of acts. *Parrott*, 135/329, 69 S. E. 552.

Of fraud, defective, in not setting out facts. *Daniel*, 18 A. 25, 27, 88 S. E. 745; *Hanshaw*, 18 A. 126, 88 S. E. 909.

Not sufficient to show procurement of note by fraud. *Mallory*, 135/702, 70 S. E. 586.

Of fraud by misrepresentations, when sufficient to entitle party to repudiate agreement. *McConnell*, 134/98, 103, 67 S. E. 440.

Of fraud must allege facts tending to show. *Truitt-Silvey Hat Co.*, 130/640, 61 S. E. 481.

Of fraud must allege specific acts. *Carroll*, 2 A. 60, 58 S. E. 309.

Of fraud, not sufficiently specific as to facts constituting. *Groves*, 5 A. 160, 62 S. E. 731.

Of recoupment, based on fraudulent representations in sale, construed as setting up damages on account of breach of contract, and not for tort. *Bowers*, 17 A. 779, 88 S. E. 703.

Of fraud set up no defense against note. *Vanzant*, 2 A. 763, 59 S. E. 85.

Of fraud to suit on written contract, provable by parol. *McBride*, 102/422, 30 S. E. 999.

Of fraud when deficient in allegation, as defense against note for price of mules. *Hammock*, 143/602, 85 S. E. 764.

Special, necessary, to set up fraud as defense, when. *Southern Life Ins. Co.*, 9 A. 504, 71 S. E. 742.

Pleading as to fraud may be required by court on application. *Central R. Co.*, 133/153, 65 S. E. 367.

Charge of fraud "after the fact," not "after the legal effect of the fact." *Wash*, 147/540, 94 S. E. 1009.

Construed against pleader. *Greenberg-Miller*, 138/729, 75 S. E. 1120.

General averment demurrable; facts constituting fraud must be alleged. *Field*, 139/437, 77 S. E. 559.

Demurrable, not showing that plaintiff acted under duress or influence of alleged fraudulent conduct of defendant's agents. *Mims*, 112/473, 37 S. E. 736.

Must show facts constituting, to prevent bar of limitation. *Bailey*, 140/71, 78 S. E. 423.

Whether necessary, to attack contract as void. *G. S. & F. Ry. Co.*, 15 A. 841, 84 S. E. 323.

Pointing out land for levy, accepting part of proceeds, etc, effect of, as to purchaser. *Whelchel*, 102/113, 29 S. E. 169.

Possession adverse, fraud not presumed from, but good faith. *Bowman*, 133/51, 65 S. E. 156.

As badge of fraud where retained by alleged vendor or donor. *Moore*, 115/407, 41 S. E. 614.

By alleged donor, as badge of fraud. *Ross*, 113/1047, 39 S. E. 471.

By maker of deed, as badge of fraud, where possession retained of land conveyed. *Ernest*, 107/61, 32 S. E. 898. Subject to explanation. *Stephens*, 147/410, 94 S. E. 245.

Fraud in acquiring, which prevents prescriptive title, must be moral fraud. *Floyd*, 129/676, 59 S. E. 909.

Obtained by fraud, possessory warrant lies. *Monk*, 3 A. 356, 59 S. E. 1117.

Retained by vendor, when no fraud against creditors. *Jowers*, 10 A. 297, 73 S. E. 415.

Retained of personalty did not indicate that its prior delivery to minor son to satisfy wages was fraudulent. *Hargrove*, 112/134, 37 S. E. 89, 81 Am. St. R. 24.

Prescription not based on possession in fraud of rightful owner. *Parker*, 101/160, 28 S. E. 681, 65 Am. St. R. 291.

Not based on possession originating in fraud. *Dasher*, 102/833, 30 S. E. 544; *Ellis*, 101/8, 29 S. E. 268; *Williamson*, 110/55, 35 S. E. 301.

Can not originate in fraud. Good faith of possession; sufficiency of evidence. *Teel*, 142/245, 82 S. E. 662.

Not founded on possession originating in fraud. When doctrine of laches does not apply. *Wilkes*, 120/728, 730, 48 S. E. 113.

Origin of, not shown by evidence to have been in moral fraud. *Bond*, 133/161, 166, 65 S. E. 376, 134 Am. St. R. 199. When no such fraud as to vitiate. *Smith*, 137/465, 73 S. E. 577.

Not based on possession originating in actual (not merely legal) fraud. *Wood*, 145/256, 88 S. E. 980. See *Jones*, 145/397, 89 S. E. 334.

Fraud which prevents title by, is actual, not legal. *Connell*, 111/805, 35 S. E. 667; *Tarver*, 132/798, 65 S. E. 177, 24 L. R. A. (N. S.) 1161; *Arnold*, 122/72, 49 S. E. 812; *Street*, 118/470, 45 S. E. 294.

Notice of fraud as defeating, must be actual, not merely constructive. *Dixon*, 135/183, 69 S. E. 21; *Shingler*, 135/668, 70 S. E. 563. Not constructive notice or negligence. *Camp Lumber Co.*, 144/445, 87 S. E. 413.

Presumption of fraudulent intent, constitutionality of legislation establishing. *Youmans*, 7 A. 110, 66 S. E. 383.

Of fraud from insolvency of chartered bank. *Stapleton*, 19 A. 37, 90 S. E. 1029. Presumption of fraud and rebuttal, under banking law. *Fordham*, 148/759, 98 S. E. 267.

Of fraud in law, from facts. *N. W. Ins. Co.*, 116/799, 43 S. E. 79.

Of fraud, no foundation for verdict. *Cowart*, 101/4, 29 S. E. 270.

Fraud not presumed; but slight circumstances may be sufficient to carry conviction. *Fountain*, 144/550, 87 S. E. 651; *Mobley*, 134/125, 67 S. E. 668, 137 Am. St. R. 213, 19 Am. Cas. 1004.

Price inadequate did not raise to presumption of fraud, when. *Palmour*, 119/10, 45 S. E. 790.

Procurement of note by fraud. *Walters*, 110/776, 36 S. E. 79; *Gore*, 110/900, 36 S. E. 815.

Of note, fraud in, means what. *Pate*, 114/653, 40 S. E. 715; *Johnson County Bank*, 125/42, 53 S. E. 808.

Promise as to something to be done in the future, not such fraud as would open written contract to parol addition. *Southern Fertilizer Co.*, 17 A. 642, 87 S. E. 911; *Chewning*, 17 A. 768, 88 S. E. 593.

Fraud in. *Atlanta Skirt Mfg. Co.*, 8 A. 300, 68 S. E. 1077; *Pavlovski*, 134/704, 705, 68 S. E. 511.

Not kept, to convey land to wife enabling her to obtain loan, was such as to estop husband. *Clark*, 122/275, 50 S. E. 108.

Not to call on maker of note for payment, he receiving no consideration. *First National Bank*, 108/542, 34 S. E. 143.

Prompt action necessary on discovery of fraud, by way of repudiation and offer to restore status. *Ruff*, 137/56, 72 S. E. 506.

Punishment for fraud, power of legislature as to. *Lamar*, 120/313, 47 S. E. 958.

By imprisonment of debtor, power of legislature as to. *Lamar*, 121/153, 48 S. E. 977.

Constitutionality of law for. *Wilson*, 138/489, 75 S. E. 619. Defrauding hotel, etc., a misdemeanor. *Smith*, 141/482, 81 S. E. 220, Ann. Cas. 1915D, 999.

Under act of 1913. *Mulkey*, 1 A. 521, 57 S. E. 1022; *Patterson*, 1 A. 782, 58 S. E. 284.

See catchword "Cheating," supra.

Purchase not in good faith and without notice of adverse holding. *Williamson*, 110/55, 35 S. E. 301. Of attachment levy. *Deveney*, 110/62, 35 S. E. 268.

Pendente lite, a fraud on plaintiff. *Swift*, 106/38, 31 S. E. 788.

Purgation of conveyance did not result from payment of debt. *Tune*, 131/532, 62 S. E. 976.

Ratification of contract voidable for fraud, what necessary to constitute. *Davis Sewing Machine Co.*, 117/873, 45 S. E. 228.

Of previous conveyance procured by fraud of vendee's agent; when no cause for relief. *Mills*, 148/23, 95 S. E. 698.

Reclamation of goods for false representation of solvency, what acts estop creditor to assert. *Fowler*, 137/40, 72 S. E. 407.

Of goods purchased in fraud, held by receiver. *Atlanta Brewing Co.*, 101/541, 28 S. E. 1003.

Reformation or rescission of contract for; what necessary. *Capps*, 130/146, 60 S. E. 455. When denied. *Weaver*, 134/149, 67 S. E. 662.

Of insurance policy for fraud, to make it accord with oral agreement. *Overland Motor Co.*, 147/63, 92 S. E. 931.

Relatives, slight circumstances sufficient to show collusion between. *Bryant*, 19 A. 82, 90 S. E. 1027.

Release, fraud in obtaining. *Houser*, 9 A. 766, 72 S. E. 276; *G. S. & F. Ry. Co.*, 15 A. 831, 836, 84 S. E. 323; *A. C. L. R. Co.*, 15 A. 842, 84 S. E. 316.

Of damages, procured by fraud, voidable. *Southern Ry. Co.*, 135/11, 68 S. E. 789.

Remedies of vendor from whom vendee has obtained goods on credit by false representations. *Bacon*, 117/207, 43 S. E. 482.

When action for damages, and not equitable proceeding, is remedy for fraud. *Schmitt*, 109/631, 35 S. E. 145.

Representations and promises not amounting to, in sale of article. *Schofield-Burkett Co.*, 16 A. 321, 85 S. E. 285.

Allegation as to, without allegation that when made the party making them knew they were untrue, not sufficient. *Waterman*, 20 A. 95, 92 S. E. 544.

As to amount of assets, tax returns admitted in evidence to show falsity of. *Mashburn*, 117/569, 44 S. E. 97.

As to cost of land, false, recovery of damages. *Summerour*, 119/1, 45 S. E. 713.

As to dimension of city lot, and as to what was covered by the words "more or less," in description; recovery of damages for fraud in. *Gordon*, 19 A. 795, 92 S. E. 290.

As to profits, plea as to, was too indefinite here. *McCrary*, 119/876, 47 S. E. 341.

As to quality of well-water, and in regard to ponding of water, facts showed no fraud in making. *Bigham*, 140/112, 78 S. E. 809.

As to title to land, cheating and swindling by. *Crawford*, 117/247, 43 S. E. 762; *Holton*, 109/127, 34 S. E. 358.

By insured as to his age, evidence warranting a finding that they were fraudulent. *Supreme Conclave*, 107/97, 32 S. E. 946.

Causing party to sign contract without reading. *Towns*, 16 A. 300, 85 S. E. 274; *McDonald*, 117/121, 43 S. E. 422; *Davis Sewing Machine Co.*, 117/873, 45 S. E. 228; *Gibbs*, 17 A. 388, 390, 87 S. E. 155; *Butler*, 17 A. 533, 87 S. E. 809; *Parker*, 18 A. 258, 89 S. E. 381. See *Pictorial Review Co.*, 18 A. 74, 88 S. E. 909.

Effect of unbelievable misrepresentations as defense to note for purchase-price of stock in corporation. *Ingram*, 18 A. 597, 90 S. E. 176.

False, but falsity not known to party making, when legal fraud entitling other party to damages. *Walters*, 105/584, 32 S. E. 609. Entitling vendor to rescission. *Newman*, 107/89, 32 S. E. 943.

Fraudulent though falsity not known to person making them, when. *Mashburn*, 117/567, 44 S. E. 97.

In regard to fi. fa. for which note was given, good plea as to. *Farkas*, 119/515, 46 S. E. 670.

In sales, mere puffing, or matter of opinion, not amounting to legal fraud. *Florence*, 105/583, 32 S. E. 642; *Terhune*, 107/352, 33 S. E. 394.

In sale of receiver's certificates, not shown to be false. **Drought**, 101/544, 28 S. E. 1013.

In sale of shares of stock, fraud in. **Peacock**, 20 A. 540, 93 S. E. 171.

Insufficient plea as to, in sale of horse. **Waterman**, 20 A. 95, 92 S. E. 544; **Outlaw**, 20 A. 776, 93 S. E. 310.

Made recklessly and without inquiry or exercise of ordinary diligence to ascertain facts; charge of court as to effect of, in action for damages on account of, considered. **Lyle**, 20 A. 380, 93 S. E. 20.

Misleading as to contents of written instrument. **Harrison**, 119/8, 45 S. E. 730.

Inducing execution of note. **Peoples Bank**, 18 A. 315, 89 S. E. 441.

In sale of land, as defense to note for purchase price. **Tallent**, 19 A. 16, 90 S. E. 742; **Sloan**, 20 A. 129, 92 S. E. 893; **Hanes**, 20 A. 129, 92 S. E. 896.

In sale of shares of stock; facts authorizing recovery of damages; proper instructions to jury. **Lyle**, 20 A. 374, 93 S. E. 20.

Made by executing and delivering unauthorized bond as agent for another. **Peebles**, 18 A. 369, 89 S. E. 461. Representation material, made with knowledge of falsity, fraudulent. *Ib.* 376.

Misstatements not shown to have been made with intent to defraud. **Phenix Ins. Co.**, 16 A. 261, 85 S. E. 206.

Not fraudulent, when there is no reason why they should be believed and acted on. **Dixon**, 18 A. 51, 88 S. E. 825.

Of agent, as to contract of insurance, fraudulent, effect of. **Mutual Reserve Asso.**, 115/192, 41 S. E. 679.

Of executors, that they had title and right to sell, which they had not, when no defense to suit against purchaser, who gave notes and took possession. **Keen**, 116/731, 42 S. E. 1022.

Of intention to do a specified thing, as affecting representation of past act. **Smith**, 116/587, 42 S. E. 766.

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Of payee's agent, when not available for defense to suit on note. **Shaw**, 139/482, 77 S. E. 577.

Of quantity of land sold, made to induce purchase, when immaterial. **Walker**, 112/412, 37 S. E. 749.

Of seller, as defense to note for purchase-money. **Carithers**, 111/742, 36 S. E. 958; **Martin**, 115/156, 41 S. E. 686.

Of vendee, to obtain goods on credit, false; remedies of vendor. **Bacon**, 117/207, 43 S. E. 482; **Mashburn**, 117/567, 44 S. E. 97.

In sale of horse, deceit in, as basis of action. **Houze**, 20 A. 438, 93 S. E. 16.

Resulting in written contract, false; parol proof as to. **Summerour**, 119/1, 45 S. E. 713; **Harrison**, 119/8, 45 S. E. 730; **McCrary**, 119/876, 47 S. E. 341.

That business was "all right," not equivalent to declaration that corporation was solvent and a paying concern. **Terhune**, 107/352, 33 S. E. 394.

That he had purchased and become the owner of valuable property, authorized conviction as cheat and swindler. **Williams**, 105/606, 31 S. E. 546.

To commercial agency, as to financial standing, when fraud on subscriber of the agency. **Mashburn**, 117/567, 568, 44 S. E. 97.

To mercantile agency as basis of extension of credit; effect of lapse of time after making them and before sale of goods. **Waldrop**, 114/613, 40 S. E. 830.

To commercial agency several months before credit extended, basis of rescission for fraud. **Newman**, 107/95, S. E. 943.

To obtain credit, effect of lapse of time after making them and before sale of goods. **Mashburn**, 117/567, 568, 44 S. E. 97.

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45 S. E. 713; *Kerr Glass Mfg. Co.*, 13 A. 512, 79 S. E. 381.

By prompt action and offer to restore, etc. *Finch*, 146/687, 92 S. E. 63.

Construtive fraud as cause for. Cases resting on warranty distinguished from those based on misrepresentation only. *Newman*, 107/90, 32 S. E. 943.

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Discussed. *Equitable Loan Co.*, 117/668, 44 S. E. 320, 62 L. R. A. 93, 97 Am. St. R. 177. When inconsistent with other remedy. *Bacon*, 117/207, 43 S. E. 482.

Facts did not warrant. *Heard*, 134/52, 67 S. E. 429. How and when to be exercised. *Tuttle*, 134/329, 67 S. E. 806, 20 Ann. Cas. 168.

General rule as to need of tender, when not applied to insurance policy. *Columbian Ins. Co.*, 146/267, 91 S. E. 106.

In equity; petition failed to set forth cause for relief. *Ruff*, 137/56, 72 S. E. 506.

In horse-swap. *Sasser*, 9 A. 27, 70 S. E. 197. In sale of patent right. *Miller*, 9 A. 511, 71 S. E. 927.

In land sale, allegations made no case for. *Bigham*, 140/712, 78 S. E. 809. Allegations insufficient as against demurrer. *Garner*, 144/441, 87 S. E. 471. Offer too late, in answer to suit. *Cabaniss*, 144/511, 87 S. E. 653.

In sale. *Hoyle*, 105/123, 31 S. E. 137.

In sale, right superior to that under mortgage to secure antecedent debt. *Sutton*, 144/588, 87 S. E. 799.

In sale of horse. *Mizell Live Stock Co.*, 10 A. 362, 73 S. E. 410.

In sale, when not authorized. *Couch*, 142/29, 82 S. E. 459.

In stock subscription. *Southern Tobacco Co.*, 11 A. 501, 75 S. E. 828. Not obtained at expense of corporation's creditors. *Empire Life Ins. Co.*, 145/818, 89 S. E. 1085.

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Insufficient plea as to. *Dixon*, 18 A. 45, 51, 88 S. E. 825.

Meaning of code-section requiring that offer to rescind to made "promptly, upon discovery of the fraud," is that the offer must be made within a reasonable time. *Stovall*, 20 A. 94, 92 S. E. 543. See *Sales*.

Misrepresentations as ground for. *Talent*, 19 A. 16, 90 S. E. 742.

Not obtained by one retaining possession of land received in exchange. *Hamilton*, 142/432, 83 S. E. 103.

Not prevented by contract providing that it was "not subject to cancellation." *Washington Post Co.*, 7 A. 775, 68 S. E. 337.

Of contract for exchange of land, and cancellation of deed and mortgage. *Casey*, 105/198, 31 S. E. 427.

Of vendor in representation as to title. *Jay*, 8 A. 482, 70 S. E. 16.

Offer to rescind refused on specified ground, other reasons immaterial. *Farkas*, 119/515, 46 S. E. 670.

Offer to return, as prerequisite to. *Eagan*, 115/130, 134, 41 S. E. 493; *Hinkle*, 148/250, 96 S. E. 340. See *Wimpee*, 148/420, 96 S. E. 993.

Prompt action required. *Brown Bank*, 143/52, 84 S. E. 183.

Restoration of status, as condition of. *Jones*, 13 A. 390, 79 S. E. 239. Rescission prevented by delay. *Coca-Cola Bottling Co.*, 13 A. 772, 80 S. E. 32.

Restoration of property or benefits of contract, as prerequisite. *Sasser*, 9 A. 27, 70 S. E. 197; *Miller*, 9 A. 511, 71 S. E. 927. See *Houser*, 9 A. 766, 72 S. E. 276.

Right of vendor superior to that of creditor who took bona fide for pre-existing debt. *Mize*, 138/499, 75 S. E. 629.

Right to, as against third persons dealing with vendee on the faith of the property. *Mashburn*, 117/67, 44 S. E. 97.

Rule requiring restoration before, when not applicable. *Mann*, 14/268, 88 S. E. 968. See *Burt*, 145/865, 90 S. E. 73.

Should be offered promptly on discovery of fraud. *Page*, 106/77, 31 S. E. 804; *Eskridge*, 106/587, 32 S. E. 635.

Tender of goods to carrier, when sufficient, vendor being non-resident. *Cohen*, 102/846, 30 S. E. 531.

Waiver of, by delay in announcing purpose to rescind. *Pearce*, 111/847, 36 S. E. 457.

What necessary to authorize. *Sasser*, 6 A. 321, 323, 64 S. E. 1100.

When tender back necessary. *Petty*, 109/666, 35 S. E. 82.

Restoration of money received before relief from fraud, when not essential to reformation of contract. *Dannelly*, 131/694, 63 S. E. 257.

Before cancellation of contract of sale, when not required. *Collier*, 137/658, 74 S. E. 275, *Ann. Cas.* 1913A 1110.

Return of money received by one whose signature to contract was procured by fraud, not necessary, in order to assert its invalidity, when. *G. S. & F. Ry. Co.*, 15 A. 831, 836, 84 S. E. 323; *A. C. L. R. Co.*, 15 A. 842, 84 S. E. 316.

Sale at public auction, by-bidding or puffing at, voids. Who is, and is not a puffer. *McMillan*, 110/72, 35 S. E. 334, 48 L. R. A. 345, 78 *Am. St. R.* 93.

By administrator, and purchase, to defeat execution against person having equitable title; recovery not allowed to her. *Bond*, 135/733, 737, 70 S. E. 572.

Contract in writing, signed by purchaser, released seller from liability for his agent's misrepresentations. *Case &c. Co.*, 137/603, 73 S. E. 1063.

Judicial, circumstances tending to show fraud in. *Haunson*, 109/802, 35 S. E. 227.

Made by fraudulent representations, measure of damages. *McCrary*, 119/876, 47 S. E. 341.

Made by fraudulent representations, trover maintainable, when. *Johnson*, 121/83, 48 S. E. 685. Misrepresentations, as defense to action for price. *Equitable Mfg. Co.*, 121/381, 49 S. E. 271.

Misleading conduct of vendor in. *Haltiwanger*, 103/316, 29 S. E. 965.

Of corporate property, remedies against fraud in. *Workingmen's Union Asso.*, 135/5, 68 S. E. 697.

Of goods induced by misrepresentations, right of seller to rescind. *Fountain*, 144/550, 87 S. E. 651. Right of purchaser, and his liability if he abandon property. *Houze*, 144/700, 87 S. E. 1054.

Of land, cause of action alleged for fraudulent representations in, as to width. *Rosenthal*, 142/682, 83 S. E. 511.

Of land, deceitful representations of vendor in, as defense to suit for price. *Brannen*, 135/590, 69 S. E. 1079.

Of land; false statement of acres. *Emlen*, 133/726, 66 S. E. 934.

Of mortgaged property with intent to defraud. *Denney*, 2 A. 146, 58 S. E. 318.

Of property effected by misrepresentations; when no defense against suit on notes. *Elban*, 145/383, 89 S. E. 327.

Of stock of goods in bulk, fraudulent for non-compliance with act of 1903; constitutionality of statute; buyer's liability to garnishment by seller's creditors. *Sampson*, 127/454, 56 S. E. 581, 62 S. E. 90. Not complying with act of 1903. *Parham*, 127/303, 56 S. E. 460. Fraudulent and void as to creditors. *Sampson*, 127/454, 56 S. E. 488, 9 *Ann. Cas.* 331. Fraudulent here. *Hagan Supply Co.*, 11 A. 456, 75 S. E. 672. Act of 1903 not applied to sale of all lumber by sawmill operator. *Cooney*, 133/511, 66 S. E. 257, 25 L. R. (N. S.) 758.

Of stock shares induced by misrepresentation, as defense to note for price of them. *Huson Ice Co.*, 143/297, 84 S. E. 969.

To defeat creditors, remedies on. *International Silver Co.*, 140/10, 78 S. E. 609, 45 L. R. A. (N. S.) 492.

Under execution, fraud in, as ground for injunction. *State*, 103/165, 29 S. E. 692.

- With knowledge of intent to resell immediately; attempt to reserve title not allowed. *Crenshaw*, 134/686, 68 S. E. 498.
- Scheme of husband and wife to get building-material; petition multifarious.** *Pittman*, 102/11, 29 S. E. 131.
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- Security-deed, void for fraud, taken with notice, cancellation of, as cloud.** *Leonard*, 102/536, 29 S. E. 147.
- Service, fraudulent procurement of acknowledgment.** *Wade*, 133/608, 66 S. E. 922.
- Services rendered, false representations as to, in defense to suit on note.** *Dooley*, 104/711, 31 S. E. 203.
- Shipper not guilty of fraud, by taking carrier's receipt on printed form leaving valuation blank.** *Southern Express Co.*, 134/445, 67 S. E. 944, 137 Am. St. R. 227.
- Omission by, to fill blank in receipt, as to valuation, not a fraud on carrier:** *Adams Express Co.*, 138/443, 449, 75 S. E. 596, Ann. Cas. 1913D, 976.
- Signing induced by fraud.** *McDonald*, 117/121, 43 S. E. 422; *Davis Sewing Machine Co.*, 117/873, 45 S. E. 228; *Harrison*, 119/8, 45 S. E. 730.
- Procured by misrepresentation while signer was hurrying, etc., provable by parol evidence.** *Hayes*, 143/183, 84 S. E. 442.
- Without reading paper, in hurry, allegations as to inducement of, when no defense.** *Morgan*, 135/548, 73 S. E. 844.
- Silence amounting to fraud.** *Southern Express Company*, 5 A. 689, 63 S. E. 809; *High Co.*, 5 A. 863, 63 S. E. 1125; *Crawford*, 117/247, 43 S. E. 762; *Gordon*, 105/148, 31 S. E. 151.
- As misrepresentation.** *Ricks*, 8 A. 449, 453, 69 S. E. 576.
- As to concealed danger.** *Huey*, 8 A. 603, 70 S. E. 71; *Beard*, 8 A. 618, 70 S. E. 57.
- Of debtor, who knew advertisement and sale did not cover all of land levied on, was not fraud.** *Keith*, 114/176, 39 S. E. 850.
- Of one whose duty it is to disclose, treated as continuation of fraud.** *American National Bank*, 131/854, 63 S. E. 622, 21 L. R. A. (N. S.) 962.
- Of sheriff, when did not amount to fraud.** *Stroud*, 116/332, 42 S. E. 496.
- When equivalent to express misrepresentation.** *Marietta Fertilizer Co.*, 4 A. 245, 248, 61 S. E. 149.
- Standing by and permitting purchase of property without disclosing title, when no such fraud as to estop from setting it up.** *Stonecipher*, 131/688, 63 S. E. 215, 127 Am. St. R. 248.
- Solvency or insolvency of debtor, admissibility of evidence as to.** *Kirkman*, 145/452, 89 S. E. 411. Range of evidence, how restricted. *Warren*, 145/503, 89 S. E. 520.
- Stock in corporation, sale of, induced by false representations; cause of action for damages alleged.** *Howard*, 143/550, 85 S. E. 757. Admissibility of evidence in suit concerning. *Fite*, 142/660, 83 S. E. 515.
- Stockholders, no case shown of fraud or mismanagement by majority of.** *Bartow Lumber Co.*, 131/329, 62 S. E. 233. Stockholder not aided by law or equity to share in fruits of fraud on corporation. *Proctor*, 134/394, 67 S. E. 942.
- Stock subscription, fraud in obtaining, when no cause for relief after corporation becomes insolvent, etc.** *Wilkes*, 142/458, 83 S. E. 89.
- Contract attacked for fraud in concealing terms printed on separate page of folded paper, etc.** *Dotson*, 140/161, 78 S. E. 801.
- Induced by fraud of promoters. Limitation of action; no fiduciary relation.** *Frost*, 144/26, 85 S. E. 1028. Subscriber not released on liquidation of corporate affairs. *National Bank*, 144/426, 87 S. E. 406.
- Induced by fraud; no defense as against creditors of insolvent corporation, when.** *Cosmopolitan L. Ins. Co.*, 20 A. 622, 93 S. E. 507.
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laches. *Georgia Cement Co.*, 143/84, 84 S. E. 461.

On secret or special terms, legal fraud on creditors and other subscribers. *Spratling*, 140/625, 79 S. E. 536.

Oral promises to procure signing of, when no defense. *Chicago Bldg. Co.*, 101/820, 29 S. E. 291.

Payable in specifics of less value, a legal fraud upon creditors. *Allen*, 122/552, 50 S. E. 494.

Procured by fraud; right of rescission or other relief unless rights of creditors have accrued. *Gress*, 135/60, 68 S. E. 834, 31 L. R. A. (N. S.) 900.

Creditors not affected by fraud in procuring. *Chappell*, 145/720, 89 S. E. 777; *Empire Ins. Co.*, 145/818, 89 S. E. 1085.

Procured by fraud, when canceled. *American National Bank*, 145/618, 89 S. E. 691.

Surety barred from setting up stated ground for discharge, where principal released on bond he signed. *Keilsohn*, 144/367, 87 S. E. 297.

Survey of lands, agreement for, induced by fraud, could be repudiated. *McConnell*, 134/95, 103, 67 S. E. 440.

Taking advantage of one's wrong, not allowed. *O'Neill Co.*, 118/114, 118, 44 S. E. 980; dissent in *Venable*, 118/56, 45 S. E. 29; *Watkins*, 118/379, 45 S. E. 260.

Tax assessment, fraud and misconduct in. *Vestel*, 143/368, 85 S. E. 187.

Tender of money received, when not necessary before attacking settlement for fraud. *Dannelly*, 131/696, 63 S. E. 257.

Testamentary disposition, admissibility of evidence on issue of procuring. *Gordon*, 141/347, 348, 80 S. E. 1007. Testator's declarations inadmissible to prove fraud. *Young*, 110/10, 35 S. E. 278.

Timber-land acreage, recovery of damages on account of fraudulent representations of, inducing purchase. *Golden*, 138/379, 75 S. E. 424.

Time will not cure or sanctify fraud. *Parker*, 101/163, 28 S. E. 681, 65 Am. St. R. 291.

Title or ownership of land, misrepresentation of, as defense to suit on note for price of it. *Norton*, 130/392, 60 S. E. 1049.

Misrepresentation as to, as ground for recovery of money paid, etc. *O'Neal*, 9 A. 180, 70 S. E. 971.

Misrepresentation or non-disclosure of facts as to, by vendor; necessary allegations in action for deceit. *Garbutt Lumber Co.*, 6 A. 189, 64 S. E. 698.

Obtained by fraud and conveyed to third person in discharge of pre-existing debt; he stands as purchaser for value. *Sutton*, 144/588, 87 S. E. 799.

Of bona fide purchaser not affected by fraud of vendor in obtaining property, when. *Willingham's Sons*, 18 A. 658, 90 S. E. 356.

Of purchaser at judicial sale, with notice of fraud, when not affected by. *McMillan*, 109/700, 35 S. E. 102.

Pledged as security for debt, transferred to claimant of outstanding title, who conveys to innocent purchaser, creditor not responsible to debtor. *Cumming*, 118/612, 45 S. E. 479.

Trade-mark or name used to deceive the public; remedies of owner thereof. *Hagan & Dodd Co.*, 1 A. 100, 57 S. E. 970.

Deceptive as to place where goods manufactured, prior use of, gave no right to equitable relief. *Coleman*, 103/784, 30 S. E. 639, 41 L. R. A. 470, 68 Am. St. R. 143.

Transaction free from fraud, verdict unsupported. *Cowart*, 101/1, 29 S. E. 270.

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Trust express, must be in writing. *Eaton*, 121/548, 49 S. E. 593.

Funds, misappropriation of; petition good on demurrer. *Fort*, 108/588, 34 S. E. 150.

Undue influence is the handmaiden of fraud. *Field*, 139/437, 441, 77 S. E. 559.

May be a species of fraud, or may exist without positive fraud. *DeNieff*, 138/248, 252, 75 S. E. 202.

What is, on part of one standing in confidential relation. *DeNieff*, 138/249, 75 S. E. 202.

Unintentional deception of principal by agent, to damage of former and benefit of latter, renders transaction fraudulent. *Williams*, 3 A. 760, 60 S. E. 372. See *Gann*, 3 A. 589, 60 S. E. 283.

Value of goods sold, misrepresentations as to; allegations demurrable, if no want of opportunity to examine. *Hayslip*, 142/49, 82 S. E. 441.

Vendor and vendee could not defeat rights of transferee of notes by manipulating papers, deed being held in escrow. *Field*, 142/425, 83 S. E. 93. Vendee in executory contract of sale of goods prevented one of agreed valuers from acting. This did not bind or estop him. *Elberton Co.*, 122/858, 869, 50 S. E. 964.

Waiver of fraud and election to affirm contract, by what acts. *Fowler*, 137/40, 72 S. E. 407.

Of fraud by paying part and procuring extension of time, with knowledge

of the facts. *Tuttle*, 134/325, 67 S. E. 806, 20 Ann. Cas. 168.

Of fraud by procuring extension of time for payment. *Coca-Cola Bottling Co.*, 13 A. 772, 80 S. E. 32.

Of defense against purchase-money note, not prevent setting up misrepresentations, when. *Ingram*, 18 A. 597, 599, 90 S. E. 176.

Of defense arising on fraud, when not made by giving new note. *Phillips*, 144/850, 88 S. E. 195.

Of right to set up fraud. *Southern Tobacco Co.*, 11 A. 501, 75 S. E. 828.

Warehouseman's conversation, and statement in receipt, as to insurance, misled customer, but gave no cause of action. *Atwater*, 116/746, 42 S. E. 1007.

Wife's title from husband, good as against him, though taken with knowledge of his purpose to defeat creditors. *Flannery*, 112/648, 37 S. E. 878.

Will, admissibility of testimony as to fraud and undue influence in making of. *Penn*, 144/67, 86 S. E. 233.

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Probate of, obtained by fraud; judgment not set aside where diligence wanting before its rendition. *Hightower*, 104/608, 30 S. E. 862.

Probate of, issue of fraud and undue influence; relevancy of testimony. *Holland*, 148/277, 96 S. E. 419.

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Year's support, collateral attack for fraud in return setting apart, not supported after seven years. *Stewart*, 139/68, 71, 76 S. E. 574.

Excessive amount set apart as in violation of agreement; judgment vacated. *Ellis*, 147/609, 95 S. E. 4.

FRAUDS, STATUTE OF.

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See Contracts.

Acceptance and receipt of goods, to avoid operation of statute, must be a physical transfer beyond control of vendor to that of vendee. *Brunswick Grocery Co.*, 116/1, 42 S. E. 366.

In writing, of written order for goods, not necessary to bind purchaser, where the goods were shipped. *Maine*, 7 A. 311, 66 S. E. 804.

Of bill of exchange, facts here did not constitute an exception to the rule as to. *Lewin*, 115/127, 41 S. E. 497.

Of bill of exchange; validity of agreement to accept in future. *Parish*, 11 A. 773, 76 S. E. 153.

Of draft; facts constituting exception to rule requiring written acceptance. *Empire Cotton Oil Co.*, 18 A. 377, 383, 89 S. E. 454.

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Taking contract as to sale out of the statute. how shown. *Luke*, 9 A. 118, 70 S. E. 596; *Wilkerson*, 10 A. 698, 73 S. E. 1088; *McGhee Cotton Co.*, 10 A. 700, 74 S. E. 66.

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Action, more than words, required to take parol agreement out of statute. *Walker*, 134/404, 67 S. E. 1039.

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Admission in correspondence, by failing to deny agreement, may take it out of statute. *Capital City Brick Co.*, 5 A. 442, 63 S. E. 562.

In plea, taking agreement out of statute. *Marks*, 8 A. 559, 69 S. E. 1131. See *Capital City Brick Co.*, 5 A. 443, 63 S. E. 562.

Of contract, as claimed, not hinder setting up the statute. *Douglass*, 110/160, 35 S. E. 339.

Oral agreement, effect of. *Campbell*, 6 A. 135, 64 S. E. 571.

That a contract was made, when treated as meaning a valid, properly executed contract. *Early County*, 4 A. 268, 63 S. E. 353.

Adoption of child, performance of parol agreement for, removes objection. *Crawford*, 139/658, 78 S. E. 30, 44 L. R. A. (N. S.) 773.

Agent or fiduciary who seeks to take benefit to himself, statute not invoked to prevent application of equitable principles to transaction of. *Forlaw*, 124/273, 52 S. E. 898.

Agreement to execute notes for debt of another, not complied with, promisor liable on oral agreement to assume debt, under facts here. *Williams*, 21 A. 44, 93 S. E. 510.

Of owners of coterminous lands, fixing boundary line, not within the statute. *Bennett*, 146/474, 91 S. E. 553.

In parol, for sale of land, not enforceable. Plaintiff paid one dollar as consideration for allowing him 20 days to pay \$499, and tendered \$499 within that time. *Gillis*, 131/444, 62 S. E. 524.

Allegation of contract not demurrable because no averment of writing. *Montgomery*, 140/51, 78 S. E. 413; *Boney*, 147/30, 92 S. E. 636.

That contract was in writing, not necessary. *G., F. & A. Ry. Co.*, 12 A. 180, 76 S. E. 1063.

Construed as referring to parol agreement; writing not alleged. *Shores-Mueller Co.*, 23 A. 251, 98 S. E. 228.

See catchwords "Demurrer," "Plea," infra.

All terms of the contract, and assent by both parties, must be in writing to comply with the statute. *Wilkerson*, 10 A. 697, 73 S. E. 1088; *Hamby*, 14 A. 515, 81 S. E. 593.

Ambiguity in contract of sale, when not permissible to explain by parol. *Borum*, 125/200, 53 S. E. 608.

Arrangement under which land was to be bought at foreclosure sale, and the mortgagee allowed to redeem by making certain payments, part of which were made, enforcement of. *Horne*, 119/534, 46 S. E. 663.

Authority by parol to execute contract required to be in writing. *Lundy*, 11 A. 805, 76 S. E. 594; *Westley*, 10 A. 9, 72 S. E. 514; *McNamara*, 10 A. 669, 73 S. E. 1092.

To make memorandum required by statute, may be conferred by parol. *Brandon*, 126/286, 55 S. E. 241, 7 Ann. Cas. 1093. See dissent.

To sell, when need not be in writing. *Hirsh*, 125/657, 54 S. E. 678.

Bankrupt's promise between adjudication and discharge in bankruptcy, to pay debt existing before adjudication, must be in writing. *Bank of Elberton*, 20 A. 96, 92 S. E. 547.

Barred debt, identification of, in new promise, aided by parol proof. *Duncan*, 14 A. 306, 80 S. E. 726.

Blanks in contract; verbal authority to fill. *Smith*, 111/739, 36 S. E. 957.

Bond for title, assumption of debt by grantee of obligee in, not within the statute. *Cowart*, 140/435, 79 S. E. 196, 47 L. R. A. (N. S.) 621, Ann. Cas. 1915A, 1116.

Boundary line between coterminous proprietors, parol agreement as to, when not within the statute. *Farr*, 118/277, 45 S. E. 230.

Executed parol agreement locating, is not within the statute. *Osteen*, 131/215, 62 S. E. 37, 127 Am. St. R. 212.

Broker acting for himself not authorized to make and sign memorandum binding the buyer. *Happ Co.*, 145/836, 90 S. E. 61.

Memorandum of, sufficient to take contract of sale out of statute. *Brooke*, 19 A. 21, 90 S. E. 1037.

Cases on statute of frauds cited and distinguished. *Augusta Southern R. Co.*, 106/865, 33 S. E. 28; *Lyons*, 108/576, 579, 34 S. E. 721.

Change or abrogation of written contract, after its execution, when shown by

parol evidence. *Sparks Improvement Co.*, 4 A. 61, 60 S. E. 810. Change or novation of contract which is required to be in writing can not be shown by parol proof. *Ver Nooy*, 17 A. 229, 233, 86 S. E. 456.

Charge of court as to, error, where not adjusted to the facts in evidence, and where the plea of the statute of frauds was abandoned. *White Crown Fruit Jar Co.*, 19 A. 195, 91 S. E. 245.

Classification of contracts, with reference to requirement of writing and signing. *Delaware Ins. Co.*, 126/386, 55 S. E. 330, 7 Ann. Cas. 1134.

Conflict of decisions on. *Coldwell*, 138/233, 240, 75 S. E. 425.

Consideration of deed may be shown to be the performance of a parol agreement. *L. & N. R. Co.*, 133/21, 65 S. E. 86, 24 L. R. A. (N. S.) 374, 17 Ann. Cas. 860.

Other than love and affection must support promise to pay debt of other person. *Wright*, 146/778, 92 S. E. 640.

Parol proof as to, where contract is required to be in writing. *Strickland*, 14 A. 661, 82 S. E. 161.

"Contract," allegation as to, presumed to mean written contract. *Brooks*, 12 A. 104, 76 S. E. 765.

Declared on was not too incomplete to satisfy statute. *Terry*, 136/187, 70 S. E. 1100.

For improvement of realty is not within statute, though it involve furnishing materials in excess of \$50 by the contractor. *Campbell*, 6 A. 134, 64 S. E. 571.

For purchase and sale of goods was not within the statute. *Happ*, 136/671, 71 S. E. 1099.

For sale of goods, and executory agreement for future delivery distinguished. *Forsyth Co.*, 112/202, 37 S. E. 485, 81 Am. St. R. 28.

For sale of goods; what necessary to satisfy. Discussion and citations. *Oglesby Co.*, 112/360, 37 S. E. 372.

Need not be alleged to have been written. *Taliaferro*, 112/62, 37 S. E. 106.

Not within statute, evidenced by definite written proposal unconditionally accepted in writing. **Cherokee Mills**, 122/268, 50 S. E. 82.

Not within statute, for storing cotton, etc. Acknowledgment of contract. **Pope**, 1 A. 184, 57 S. E. 949.

Of bargain and sale mutually binding, not apparent from instruments. Parol evidence inadmissible. **Timmons**, 141/714, 82 S. E. 29.

Of ginner delivering cotton to warehouse company to deliver all cotton ginned by him, the company agreeing to collect ginning charges from customers taking the cotton, was not within the statute. **Farmers Warehouse Co.**, 8 A. 339, 69 S. E. 33.

Partly in parol, partly in writing, is within statute. **Lyons**, 108/573, 34 S. E. 721.

Time of performing, dependent on contingency that can not happen within year, is within the statute; aliter if it may happen. **Young Men's Christian Asso.**, 140/292, 78 S. E. 1075, 48 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 136.

To sell land, statute as applied to. **Studdard**, 139/746, 78 S. E. 16.

Which must be and is written can not be subsequently modified by parol. **Moore**, 133/762, 66 S. E. 1080; **Jarman**, 134/19, 67 S. E. 403. Case as presented did not authorize invoking this rule as against the plaintiff. **Mendel**, 134/610, 68 S. E. 430.

Correspondence as to sale of lands, constituting binding contract. **Brooks**, 103/712, 30 S. E. 630.

Cotton moved to public place designated by vendee; acceptance and delivery complete. **Daniel**, 106/91, 31 S. E. 734.

Creditor's oral promise to pay existing debt (debtor remaining bound), not enforceable. **Strauss**, 101/307, 28 S. E. 850.

Crop to be raised and delivered, validity of agreement as to. **Gilbert**, 22 A. 753, 97 S. E. 251.

Debt of another, agreement to pay, not concurred in by him, is within the statute. **Fields**, 20 A. 102, 92 S. E. 653.

Must be identified by the writing itself or in connection with other writing, without aid of parol evidence. **Pearce**, 125/444, 54 S. E. 103.

Account for definite amount assumed, bill of particulars not necessary; incorrectness of account, immaterial. **Bush**, 4 A. 532, 62 S. E. 92.

Action on parol promise of stockholders to answer for debts of corporation, as inducement to sale of its entire stock, properly dismissed on demurrer. **Grafton**, 17 A. 470, 87 S. E. 693.

Oral agreement of A, on employing an employee of B, that in consideration of B's relinquishment of the previous contract of employment he would pay a debt of the employee to B, was not within the statute. **Williams**, 21 A. 44, 93 S. E. 510.

Allegations as to agreement and consent of the creditor, insufficient to show that he was a party to agreement of substitution, did not take case out of the statute. **Palmetto Mfg. Co.**, 123/798, 51 S. E. 714.

A's verbal promise to pay B's account, in order to prevent prosecution of B, not valid. **Bush**, 4 A. 533, 62 S. E. 92.

Consideration for promise to pay, sufficient, where original debt was released. **Daniel**, 6 A. 548, 65 S. E. 301. Promise without consideration. **Saul**, 6 A. 843, 65 S. E. 1065.

Consideration of promise to pay, sufficient. **Hicks**, 17 A. 391, 87 S. E. 152. See **Hinson**, 17 A. 395, 87 S. E. 154.

Evidence authorized jury to find that promise to pay for fertilizer furnished to another was not an original undertaking, but mere suretyship. **James**, 19 A. 157, 91 S. E. 219.

Immaterial whether amount assumed is greater or less than actual debt. **Oglesby**, 18 A. 401, 89 S. E. 436.

Debt of another—(Continued).

Not applied where retired partner agrees to pay debt which firm contracted while he was a member. *Reid*, 109/424, 34 S. E. 608.

Oral agreement of stockholder of corporation to pay a debt of the corporation to another stockholder was not binding. *Fields*, 20 A. 102, 92 S. E. 653.

Oral promise to pay for goods furnished to another was not within the statute. *Trapnell*, 21 A. 21, 93 S. E. 498.

Oral promise to pay, from funds of debtor, in hands of promisor, not enforceable. *Few*, 18 A. 207, 89 S. E. 79.

Oral promise to answer for, not enforceable. *Lyon*, 16 A. 727, 86 S. E. 86; *Bedingfield*, 19 A. 488, 91 S. E. 793; *Wilson*, 6 A. 84, 64 S. E. 290; *Harris*, 10 A. 334, 73 S. E. 430; *Foots*, 17 A. 799, 88 S. E. 689. Where no release of original debtor shown. *Few*, 18 A. 207, 89 S. E. 79.

Parol agreement with creditor of corporation, by one interested in the debtor's business, to pay the debt, and future indebtedness, in consideration of a loan to be used in the business, was enforceable. *Holcomb*, 10 A. 781, 74 S. E. 307.

Parol promise to pay, when taken out of operation of the statute. *Johnson*, 132/164, 63 S. E. 827, 131 Am. St. R. 189.

Parol proof as to consideration of written promise to pay. *Strickland*, 14 A. 661, 82 S. E. 161.

Performance here took promise out of provision as to. *English*, 109/635, 34 S. E. 1002.

Petition demurrable for lack of allegations essential to show compliance with statute of frauds. *Pidcock*, 14 A. 183, 80 S. E. 526.

Promise here was an original undertaking, and not within the statute. *Oglesby*, 18 A. 401, 89 S. E. 436.

Promise made to third person, not enforceable by plaintiff in his own name. *Hammond*, 17 A. 508, 87 S. E. 711.

Debt of another—(Continued).

Promise to indemnify for becoming surety for third person need not be in writing. *Clark*, 17 A. 803, 88 S. E. 690.

Promise to pay, when not within provision as to. *Ferst*, 111/229, 36 S. E. 773. Promise here was within. *Blutenthal*, 111/297, 36 S. E. 689.

Promise to pay, without consideration. *Johnson*, 4 A. 547, 61 S. E. 1052.

Requirement that promise to pay debt of another shall be in writing, not applied where both parties are primarily liable. *Bohler*, 17 A. 382, 87 S. E. 157.

Requisites of promise to pay; must be definite as to amount. *Johnson*, 4 A. 547, 61 S. E. 1052.

Terms of promise to pay can not be settled by parol. *Johnson*, 4 A. 547, 61 S. E. 1052.

Where A told B to let C have a coffin and he (A) would see that B got the money for it, and B charged the account to A and C and looked to both for the money, it was not an original undertaking by A. *Kersey*, 21 A. 157, 93 S. E. 1017.

Where A tells B to let C have goods, and that he (A) will see that the debt is paid, and credit is given solely to A, the promise is an original, not collateral, undertaking, and not within the statute, though C be ignorant of the contract and consider himself sole purchaser. *Cordray*, 19 A. 156, 91 S. E. 239.

Where a merchant lets A have goods on B's verbal promise to see that the debt is paid, and charges them to account of both A and B, B is merely surety, and not bound, under the statute. *McAfee*, 21 A. 309, 94 S. E. 328.

Written agreement to pay such debt must itself, or in connection with other writing, identify the debt, without aid of parol evidence. *Fields*, 20 A. 102, 92 S. E. 653.

Dedication of property; agreement not held within statute. *Gartrell*, 144/688, 87 S. E. 917.

Defense arising under statute of frauds, whether action be for damages from breach, or for specific performance of

contract. Not waived by pleading inconsistent defense. *Cook*, 143/127, 84 S. E. 559.

Setting up statute of frauds must be strictly pleaded. *Williams*, 8 A. 652, 70 S. E. 89.

Under statute is a personal privilege; waiver by not raising question. *Miller*, 6 A. 447, 65 S. E. 292. Must be made in trial court, not first in reviewing court. *Shierling*, 9 A. 271, 70 S. E. 1126.

Under statute, not raised at trial; verdict for plaintiff not set aside on the ground that the contract sued on was not in writing. *Brannen*, 19 A. 518, 91 S. E. 913.

Waived by not pleading statute; whether question raised by motion for nonsuit. *Marks*, 8 A. 557, 559, 69 S. E. 1131.

Delivery and acceptance of goods may complete legal contract; but custody of them on trial will not. *Cable Co.*, 2 A. 74, 58 S. E. 319. Agreement for articles to remain where stored did not amount to. *Walker*, 134/399, 67 S. E. 1039. Delivery, acceptance, and use of article took parol contract of sale out of the statute. *Patrick*, 10 A. 506, 73 S. E. 703. Delivery and acceptance, what acts constituted. *Walker*, 134/404, 67 S. E. 1039.

Of grain sold, evidence as to. *Mendel*, 134/612, 68 S. E. 430.

Demurrer based on statute, not sustained. *Ga. Eng. Co.*, 135/58, 68 S. E. 794.

To suit on oral contract for sale of goods for more than \$50, sustained. *Herbener*, 17 A. 437, 87 S. E. 607.

For failure to allege agreement or trust was in writing, not good. *Eaton*, 121/548, 49 S. E. 593; *Anderson*, 121/688, 49 S. E. 725; *Draper*, 103/663, 30 S. E. 566, 68 Am. St. R. 136. For other cases see *Freeman*, 6 A. 164, 64 S. E. 716; *Marks*, 8 A. 557, 559, 69 S. E. 1131; *G. F. & A. Ry. Co.*, 12 A. 180, 76 S. E. 1063.

Not proper mode of raising question as to compliance with statute, when. *Kinney*, 20 A. 816, 93 S. E. 496; *Port*

Wentworth Lumber Co., 22 A. 737, 97 S. E. 194.

Not sustained because of failure to show compliance with; non-compliance not appearing. *Union Central L. Ins. Co.*, 123/470, 51 S. E. 389; *Allen*, 125/438, 54 S. E. 137; *Delaware Ins. Co.*, 126/380, 55 S. E. 330, 7 Ann. Cas. 1134; *Belt*, 126/767, 56 S. E. 81.

Setting up statute, not good, where petition does not show agreement was oral. Plea must be filed. *Blumenthal*, 106/424, 32 S. E. 344; *Walker*, 111/454, 36 S. E. 800.

Setting up statute, sustained. *Coldwell*, 138/233, 240, 75 S. E. 425.

Description: "Boyd and Dekle tracts of land," whether sufficient. *Corbin*, 126/429, 55 S. E. 30.

Of land wanting, writing did not satisfy. *Douglass*, 110/159, 35 S. E. 339.

Of property, insufficient, in written contract, contract void. *Mims*, 19 A. 53, 90 S. E. 1035.

Of property, when sufficient. *Good Roads Machinery Co.*, 21 A. 161, 93 S. E. 1018.

Of subject-matter, what required in. *Borum*, 125/200, 53 S. E. 608.

Partial, aided by parol. *Douglass*, 110/159, 35 S. E. 339.

"Ribs," in contract of sale, insufficient, it appearing that several kinds were known to the trade, and parol proof being necessary to show what kind was intended. *Borum*, 125/200, 53 S. E. 608.

Devise, oral contract to make, is within statute. *Gordon*, 145/683, 89 S. E. 749.

Enforcement of oral promise for, after death of promisor and performance by promisee. *Landrum*, 148/774, 98 S. E. 477. See *Gordon*, 148/394, 96 S. E. 1006.

Revocation of will pro tanto. *Hartz*, 136/569, 71 S. E. 995, 38 L. R. A. (N. S.) 797, 25 Ann. Cas. 165.

Duplicate writings connected without aid of parol testimony, requirements of statute met by. *McFadden*, 22 A. 467, 96 S. E. 581.

Employment for more than a year, oral contract for, not valid. *Brooks*, 12 A. 104, 76 S. E. 765. Taken out of the statute by facts here. *Williams*, 8 A. 652, 70 S. E. 89.

English statute, intentional changes from. *Hartz*, 136/577, 71 S. E. 995, 38 L. R. A. (N. S.) 797, 25 Ann. Cas. 165.

Equity does not allow the statute to be used to work fraud. *Kirkland*, 106/536, 32 S. E. 632.

Estoppel to assert invalidity of parol contract, after receiving benefits. *Price*, 4 A. 46, 60 S. E. 800.

Evidence in conflict as to whether contract was original undertaking or promise to answer for debt of another. *Beard*, 3 A. 118, 59 S. E. 335.

In subsequent writing, curing defect in original writing, not conforming to statute. *Queen Ins. Co.*, 7 A. 787, 68 S. E. 310.

Exceptions to statute apply to guaranty. *Sikes*, 11 A. 632, 75 S. E. 988.

Executed contract not within the statute. *Good Roads Machinery Co.*, 21 A. 161, 93 S. E. 1018.

Sale is not executed so as to avoid the statute, by taking possession and tendering purchase-price. *Seymour*, 116/285, 42 S. E. 518, 94 Am. St. R. 131.

Gift of money to building fund, oral promise of, is within the statute. *Young Men's Christian Asso.*, 140/291, 78 S. E. 1075, 48 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 136.

Goods sold and delivered; evidence in conflict; charge to jury not erroneous. *Wholesale Mercantile Co.*, 2 A. 776, 59 S. E. 106.

Guaranty not modified by parol agreement. *Sikes*, 11 A. 632, 75 S. E. 988.

Hiring, contract of, for more than year, is within statute. *Bentley*, 3 A. 242, 59 S. E. 720.

For a year, to begin in presenti, is not within statute. *Hudgins*, 126/639, 55 S. E. 492.

Identification of land sold, when sufficient to satisfy statute; and extrinsic evidence admissible. *Singleton*, 130/717, 61 S. E. 722.

Insurance contracts within statute. *Augusta Southern Ry. Co.*, 106/867, 33 S. E. 28.

Must be written and signed by insurer or authorized person; signature at top, or on separate paper with proper reference, sufficient. *Delaware Ins. Co.*, 126/380, 55 S. E. 330, 7 Ann. Cas. 1134.

Labor-contract law of 1903, indictment under, not demurrable under statute of frauds. *Harwell*, 2 A. 617, 58 S. E. 1111.

Land, contract for sale of, within the statute. *Hawkins*, 132/265, 63 S. E. 852, 131 Am. St. R. 190. Statute not applied on allegations here. *Means*, 135/801, 70 S. E. 654.

Oral contract for purchase of, was not within the statute. *Flagg*, 143/379, 85 S. E. 125.

Oral promise to buy and convey, on stated terms, not enforceable. *Houston*, 146/822, 92 S. E. 635.

Parol agreement to convey, when taken out of the statute. *Bell*, 111/391, 36 S. E. 780. Taken out of the statute by payment of purchase-money. *Collins*, 115/329, 41 S. E. 609. Enforceable after payment of purchase-price. *Linder*, 116/208, 42 S. E. 358.

Parol agreement to sell, on tender in time, is within statute. *Lyons*, 106/573, 34 S. E. 721.

Parol agreement with grantee that deed to secure debt which had been paid should stand as security for another debt, not enforceable. *Pierce*, 111/725, 37 S. E. 79.

Promise to convey, in consideration of marriage, was within the statute. *Hammond*, 135/768, 770, 70 S. E. 588.

Sale, not shown by receipt for a sum "to confirm trade" for designated land, omitting price. *Hill*, 7 A. 394, 66 S. E. 1099.

Lease, as affected by statute. *Price*, 4 A. 46, 60 S. E. 800.

For two years must be written. *Hayes*, 1 A. 28, 57 S. E. 1087.

Lessee's term, parol extension of. *Lanham*, 6 A. 85, 64 S. E. 294.

Letter admitting agreement, but repudiating it because not in writing, took it out of statute. *Capital City Brick Co.*, 5 A. 436, 63 S. E. 562.

Memorandum consisting of letter to third person, or entry in book, when sufficient. *Borum*, 125/200, 53 S. E. 608.

Must indicate parties both promisor and promisee. *Oglesby Co.*, 112/359, 37 S. E. 372.

Modification of contract required to be in writing; parol modification taken out of the statute by part performance. *Strickland*, 18 A. 86, 88 S. E. 906.

Parol agreement can not modify prior contract required by law to be written, which was duly executed. *Willis*, 132/242, 63 S. E. 828; *Hawkins*, 132/265, 63 S. E. 852, 131 Am. St. R. 190; *Miller*, 6 A. 448, 65 S. E. 292; *Sikes*, 11 A. 632, 75 S. E. 988. When not applicable to absolute rescission or release. *Conant*, 120/574, 48 S. E. 234.

Not applicable if agreement were good in parol. *Augusta Southern Ry. Co.*, 106/867, 33 S. E. 28.

Motion for nonsuit may be based on statute. *Bentley*, 19 A. 657, 91 S. E. 999.

New promise not in writing, bar by statute of limitations not prevented by. *Powell*, 22 A. 695, 97 S. E. 105.

Nonsuit, motion for, whether proper mode of raising question under statute. *Marks*, 8 A. 559, 69 S. E. 1131.

Nuncupative wills, statute related to. *Scales*, 118/95, 44 S. E. 857.

Offer to buy goods, acceptance or approval of, over \$50 must be written. Entry on seller's books not sufficient. *Cable Co.*, 2 A. 73, 58 S. E. 319.

Omission of part of material terms renders contract obnoxious to statute. *Corbin*, 126/429, 55 S. E. 30.

Option to buy land; description not too vague and indefinite to be applied by extrinsic evidence. *Pearson*, 139/453, 77 S. E. 387.

Original undertaking not within; agreement of substituted tenant to pay \$40 rent to landlord. *Pylant*, 2 A. 171, 58 S. E. 329.

Alleged but not proved. *Southern Coal &c. Co.*, 141/48, 80 S. E. 285.

Not within; to pay for property if burned while occupied by promisor's servant. *Chapman*, 1 A. 212, 58 S. E. 137.

Parol evidence, inadmissible to connect writings here. *Sivell*, 119/171, 46 S. E. 67.

Parol agreement that did not become binding by performance, ineffective to release surety on a prior contract. *Willis*, 132/242, 63 S. E. 828.

To buy land as agent, title taken by him individually, case not within the statute. *Holmes*, 106/860, 33 S. E. 216.

As to land, taken out of statute by performance; this principle not applied to facts alleged. *Wood*, 143/651, 85 S. E. 538.

To pay for goods delivered to other person was not binding. *Southern Coal &c. Co.*, 141/48, 80 S. E. 285.

Partition of land, statute applicable to contract for. *Reed*, 146/821, 92 S. E. 632. Parol agreement, how so consummated as to bind. *Smith*, 133/171, 65 S. E. 414.

Partnership, agreement to enter, may be in parol, though business will lease land and buy goods over \$50. *Lane*, 139/93, 76 S. E. 874; *Smith*, 139/487, 77 S. E. 639.

Part of contract in parol, no compliance with statute. *Wilkinson*, 10 A. 697, 73 S. E. 1088; *Hamby*, 14 A. 515, 81 S. E. 593.

Material terms in parol, contract obnoxious to statute. *Borum*, 125/202, 53 S. E. 608. In sale of cotton. *Stewart*, 118/541, 45 S. E. 398.

Part delivery of goods, acceptance and payment in time stipulated, took executory contract without. *Columbus Crate Co.*, 130/432, 60 S. E. 1065.

Part payment of price, without possession, insufficient to constitute exception to statute. *Corbin*, 126/429, 55 S. E. 30; *Hill*, 7 A. 394, 66 S. E. 1099.

Part performance. *Strickland*, 18 A. 86, 88 S. E. 906.

Part performance—(Continued).

Acts deemed as, must be clear, certain, and definite. *Reed*, 146/821, 92 S. E. 632.

Acts not amounting to; taking inventory, sending out notices of sale, and ordering more goods. *Brk. Groc. Co.*, 116/1, 42 S. E. 366. When a question for jury. *Ib.*

Avoidance of statute by, no change of effect of tenancy. *Anthony Shoals Power Co.*, 142/551, 83 S. E. 137.

By accepting and paying for articles purchased took contract of sale out of the operation of the statute. *McCaw Mfg. Co.*, 115/414, 41 S. E. 664.

By delivery of and payment for portion of goods did not make promise binding. *Strauss*, 101/307, 28 S. E. 850.

Expenses and work not so held; injury compensable in damages. *Baucom*, 148/633, 97 S. E. 671.

By landlord, did not bind tenant to carry on tenancy at will after first year. *Nicholes*, 118/924, 45 S. E. 708. Effect of part performance by tenant expending labor and money. *Ib.*

Marriage was not such, as took contract to convey land without the statute. *Hammond*, 135/768, 770, 70 S. E. 588.

Not made by purchaser making payment which by subsequent agreement was diverted to a different purchase. *Empire Talc & Lumber Co.*, 22 A. 710, 97 S. E. 103.

Of lease not legally executed, statute applied to. *Hayes*, 1 A. 29, 57 S. E. 1087.

Of parol agreement relating to purchase of land took case without statute. *Webb*, 146/462, 91 S. E. 480.

Of parol contract for sale of land; facts alleged not sufficient to take case out of the statute. *Harper*, 128/444, 57 S. E. 695.

Of parol contract not declared on, letters not available as admissions of agreement entered into. *Jackson*, 108/652, 34 S. E. 207.

Sale of goods on faith of parol acceptance of draft, not such part per-

formance as to bind acceptor here. *Lewis*, 115/127, 41 S. E. 497.

Taking case out of statute. *Burgamy*, 22 A. 723, 97 S. E. 199; *Stone Mountain Granite Co.*, 19 A. 269, 91 S. E. 286; *Williams*, 21 A. 44, 93 S. E. 510. Not shown by allegations here. *Pidcock*, 14 A. 183, 185, 80 S. E. 526.

Facts did not show. *Lyons*, 108/574, 34 S. E. 721.

That evidence shows, not generally declared by court as matter of law. *Mendel*, 134/614, 68 S. E. 430.

What required for. *Bentley*, 3 A. 242, 59 S. E. 720; *Bagwell*, 9 A. 315, 319, 71 S. E. 684.

Performance accepted by other party, case of. *Flagg*, 143/379, 85 S. E. 125.

Entry of credit on books agreed to. *Johnson*, 132/164, 63 S. E. 827, 131 Am. St. R. 189. By giving up lucrative position and entering service of corporation. *Hightower*, 126/8, 54 S. E. 939, 7 Ann. Cas. 927.

By creditor, does not take out of the statute a promise to see that the debt is paid. *Bluthenthal*, 111/299, 36 S. E. 689.

By making improvements on land and by marriage of daughter of one who orally promised to convey the land to her. *Bell*, 111/391, 36 S. E. 780.

By making improvements which are not paid for by another than the promisee. *Bell*, 111/391, 36 S. E. 780.

By packing goods for shipment, taking case out of the statute. *Castles*, 8 A. 404, 69 S. E. 317. By delivery to carrier. *Marks*, 8 A. 560, 69 S. E. 1131.

By promisee, avoiding operation of statute. *Gordon*, 145/683, 89 S. E. 749; *Rivers*, 145/103, 88 S. E. 576.

By promisee in parol agreement, giving right to conveyance of land on payment of part before due. *Williams*, 147/219, 93 S. E. 215.

Complete, taking case out of statute. *Armour*, 110/413, 35 S. E. 787.

Mere non-action is not, so as to take contract out of the statute. *Hawkins*, 132/266, 63 S. E. 852, 131 Am. St. R. 190.

Not to be within year, contract within statute. *Bagwell*, 9 A. 315, 319, 71 S. E. 684; *Jackson*, 108/647, 34 S. E. 207.

Not to take place within year, under parol agreement; whether valid contract. *Walters*, 6 A. 566, 65 S. E. 357.

Of agreement to give personal care, in consideration of promise to devise whole estate, gave right of enforcement. *Heery*, 144/468, 87 S. E. 472.

Of parol contract as to land takes same out of statute. Rule applied. *Oliver*, 114/593, 40 S. E. 826.

Partial or complete, not result by non-action. *Augusta Southern R. Co.*, 106/864, 33 S. E. 28.

So far as to render it a fraud for other party to repudiate, takes case without statute. *McLeod*, 126/167, 54 S. E. 949.

Took contract out of the statute. *Sparks Improvement Co.*, 4 A. 61, 60 S. E. 810.

Personal privilege to promisor, and may be waived. *Armour*, 110/413, 35 S. E. 787.

Personalty over \$50, sale of, within the statute. *Willis*, 132/242, 63 S. E. 828.

Plea of statute, when required. *Wilson*, 12 A. 74, 76 S. E. 755; *Draper*, 103/661, 30 S. E. 566, 68 Am. St. R. 136; *Tift*, 113/681, 683, 39 S. E. 503.

Necessary, for instruction to jury. *Gambo*, 145/614, 89 S. E. 679.

Sustainable though contract admitted. Renounced where not insisted on. *Mendel*, 134/610, 68 S. E. 430.

Possession of land, as aid to partial payment, must be actual, definite, and exclusive, and with express or implied consent of the vendor. *Kinderland*, 131/454, 62 S. E. 582.

Power of sale in mortgage, when not affected by subsequent agreement. *Moseley*, 106/603, 32 S. E. 638.

Presumption, on demurrer, that alleged contract was written, contrary not appearing. *Ansley*, 120/719, 48 S. E. 197; *Delaware Ins. Co.*, 126/380, 55 S. E. 330, 1 Ann. Cas. 1134; *Belt*, 126/

767, 56 S. E. 81; *G., F. & A. Ry. Co.*, 12 A. 180, 76 S. E. 1063.

Price of goods, contract failing to show agreement as to, is within statute. *Spalding County*, 130/653, 61 S. E. 533; *Corbin*, 126/429, 55 S. E. 30.

Of land entirely omitted, writing fails to comply with the statute. *Kinderland*, 131/454, 62 S. E. 582.

Promisee misled—would have taken security for his debt but for the promise; statute applies. *Strauss*, 101/307, 28 S. E. 850.

Original and collateral promises. *Coldwell Co.*, 138/233, 240, 75 S. E. 425.

To answer for debt of other person was within statute. *Coldwell Co.*, 138/233, 240, 75 S. E. 425. Instruction to jury as to, considered. *Averett*, 131/611, 62 S. E. 1046.

To pay for goods furnished to another, and promise to "stand security," effect of. *Fambrough*, 113/934, 39 S. E. 324.

To pay for goods to be furnished to another; when sufficient. *Wilson*, 6 A. 83, 64 S. E. 290.

To revive barred debt, requisites of. Letters here too indefinite. *Slack*, 113/617, 38 S. E. 946; *Lambert*, 117/81, 43 S. E. 416.

Public policy proclaimed by. *Kirkland*, 106/536, 32 S. E. 632.

Question raised too late, as to proper execution of contract. *Early County*, 4 A. 268, 63 S. E. 353.

Not raised at trial, no new trial because contract was not written. *Bridges*, 148/276, 95 S. E. 964.

Ratification, parol, of agent's unauthorized written contract as to improvements on land, not bind principal, when. *McMichen*, 10 A. 506, 73 S. E. 691.

Receipt of goods without acceptance did not meet requirement of statute. *Knowles*, 10 A. 569, 73 S. E. 856.

Redemption after tax sale, agreement to extend time for, when not enforced. *Etheridge*, 106/251, 32 S. E. 122; *Ray*, 136/752, 72 S. E. 26.

Rent for not more than one year, parol contract of, by agent, valid, though agent was employed by month and not authorized in writing. *Cleveland-Manning Co.*, 15 A. 657, 84 S. E. 174.

Resale in parol invalid under; agreement in parol to accept return of one of several articles. *Walker*, 134/399, 67 S. E. 1039.

Rescission of executory sale of land, when not within statute. *Jay*, 8 A. 482, 70 S. E. 16.

Revocation, parol. *Friedman*, 17 A. 677, 87 S. E. 1099.

Sale, contract of, within statute. *Sivell*, 119/168, 171, 46 S. E. 67.

Of goods above \$50 in value was within the statute. *Neal*, 23 A. 222, 97 S. E. 892.

Of corporate stock; statute applied to parol promise, to induce subscription to share of stock, that the promisor would take it if the subscriber did not want it and could not sell it. *Seaman*, 22 A. 92, 95 S. E. 378.

Of cotton for future delivery at defendant's direction; no writing; facts required finding for plaintiff. *Kaigler*, 137/36, 72 S. E. 400.

Of goods, contract for, when within the statute. *Simpson*, 20 A. 673, 93 S. E. 254; *Augusta Southern R. Co.*, 106/867, 33 S. E. 28; *Miller*, 6 A. 448, 65 S. E. 292. Sale not taken out of statute by tender and refusal to accept goods. *Ib.*

Of goods in parol, not relieved from operation of, where no transfer of physical possession. *Linder*, 116/1, 42 S. E. 366.

Of goods to be delivered on a future day; test as to whether agreement was for sale, and within the statute, or was for work and labor. *Gilbert*, 22 A. 753, 758, 97 S. E. 251.

Of goods, where order was countermanded; part performance took the case out of the statute. *Blackstock*, 21 A. 774, 95 S. E. 265.

Of goods, within the statute; letters here not sufficient. *Evans*, 21 A. 114, 93 S. E. 1023.

Of goods for more than \$50, within the statute. *Herbener*, 17 A. 437, 87 S. E. 607; *Hines*, 9 A. 778, 72 S. E. 191; *Empire Talc & Lumber Co.*, 22 A. 710, 97 S. E. 103.

Of land, parol ratification of. *Brandon*, 126/286, 7 Ann. Cas. 1093.

Of personalty amounting in value to more than \$50, nonsuit where action was based on parol contract for. *Hazlehurst*, 113/1110, 39 S. E. 477.

Of realty, under power in mortgage, not binding without memorandum. *Seymour*, 116/285, 42 S. E. 518, 94 Am. St. R. 131.

Of standing timber is within the statute. *Gray Lumber Co.*, 8 A. 76, 68 S. E. 749.

Parol authority to execute written contract as to. *Wesley*, 10 A. 9, 72 S. E. 514; *McNamara*, 10 A. 669, 73 S. E. 1092.

To be for cash, not taken out of the statute by seller weighing and setting aside goods in pursuance of buyer's direction. *Blumenfeld*, 8 A. 79, 68 S. E. 618.

Security, parol agreement ineffectual to create, in land. *Pierce*, 11/725, 37 S. E. 79.

Seller's oral representations, as affected by. *Walker*, 14 A. 803, 82 S. E. 355.

Separate paper, sufficiency of reference in, to cure previous paper not complying with. *Delaware Ins. Co.*, 126/392, 55 S. E. 330, 7 Ann. Cas. 1134.

Services to begin at a future date and continue a year, oral contract for, taken out of the statute by advance of money. *Williams*, 21 A. 44, 93 S. E. 510.

Signature, when necessary and when not, and place of; need not be at end; may be supplied by signing separate paper referring to unsigned writing. *Delaware Ins. Co.*, 126/380, 386, 55 S. E. 330, 7 Ann. Cas. 1134.

Specific performance, when denied unless plaintiff will perform his parol promise. *Kirkland*, 106/530, 32 S. E. 632.

Stock in corporation, sale of, within the statute. *Coca-Cola Bottling Co.*, 13 A. 775, 80 S. E. 32; *Hightower*, 126/8, 54

S. E. 939, 7 Ann. Cas. 927; **Young Men's Christian Asso.**, 140/293, 78 S. E. 1075, 47 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 136.

Subscription for, when need not be in writing. **Rogers**, 105/432, 31 S. E. 438, 70 Am. St. R. 50.

Substitution of debtor. **Scott**, 22 A. 683, 97 S. E. 207.

Of new purchaser, for one executing purchase-money notes for land, not effected by parol agreement. **Reams**, 5 A. 226, 62 S. E. 1014. Of one debtor for another, not within statute. **Mize**, 8 A. 408, 69 S. E. 316; **Hicks**, 17 A. 393, 87 S. E. 152; **Hinson**, 17 A. 396, 87 S. E. 154; **Footte**, 17 A. 799, 88 S. E. 689.

Of other person as debtor instead of one released, not within the statute. **Harris**, 140/768, 79 S. E. 841.

Of third person for debtor. **Hammond**, 17 A. 508, 87 S. E. 711; **Palmetto Mfg. Co.**, 123/798, 51 S. E. 714.

Release of original debtor not shown by facts here. **Footte**, 17 A. 799, 88 S. E. 689.

Telegraph, as medium of contract. **W. U. Tel. Co.**, 115/728, 42 S. E. 89, 61 L. R. A. 933.

Tenancy, parol contract for, when valid. **Gay**, 5 A. 583, 63 S. E. 650.

For one year, parol contract for, good, though not made before year begins. **Ridgway**, 8 A. 564, 70 S. E. 28.

Tender and refusal to accept, not take case out of statute. **Blumenfeld**, 8 A. 80, 68 S. E. 618.

Third person taking mortgage on land sold by parol contract could not set up statute of frauds as against purchaser, where purchase-money was paid. **Collins**, 115/327, 41 S. E. 609.

Title taken by defendant solely to herself, in violation of agreement to take joint title, plaintiff having paid part of the price, as ground for equitable relief. **Wilson**, 130/677, 61 S. E. 530.

Trees growing, contract for sale of, must be in writing; receipt omitting purchase price, insufficient. **Corbin**, 126/ V. II—62

429, 55 S. E. 30. See **Graham**, 126/625, 55 S. E. 931; **Baucom**, 148/633, 97 S. E. 671.

Trust express, not enforced on parol agreement; aliter as to implied trust in land bought with partnership funds, and title taken in name of one partner. **Roach**, 143/486, 488, 85 S. E. 703.

Implied or resulting, did not avail promisee. **Lyons**, 108/574, 34 S. E. 721.

Unilateral contract, when taken out of the statute by act of party not originally bound. **Sivell**, 119/168, 46 S. E. 67.

Waiver of defense under statute. **Miller**, 6 A. 447, 65 S. E. 292. By failure to plead it. **Marks**, 8 A. 557, 69 S. E. 1131.

Oral, valid, as to stipulation of contract within the statute. **Gray Lumber Co.**, 8 A. 76, 68 S. E. 749.

Wills, formalities of executing. Construction of English courts prior to adopting act of 1784 followed. **Shewmake**, 144/819, 87 S. E. 1046.

Writing insufficient to take contract out of statute, where omissions therein have to be supplied by parol. **Hightower**, 126/10, 54 S. E. 939, 7 Ann. Cas. 927.

Presumption that contract was in, on demurrer. **Crovatt**, 130/507, 61 S. E. 127.

FREEDOM. See **Constitutional Law**.

FREEHOLDER.

Evidence showing manager of election was. **Crawley**, 108/134, 33 S. E. 948.

FREIGHT. See **Carriers; Express Companies; Railroads**.

FRIght. See **Damages; Negligence; Railroads**.

FUGITIVES FROM JUSTICE. See **Counties; Extradition**.

FULTON COUNTY. See Counties; Municipal Courts.

Salaries of officers in lieu of fees. Act of 1911 invalid as a special law. Stewart, 140/32, 78 S. E. 457.

Superior-court terms in. Judges of other circuits can try cases while resident judges try others. Burge, 134/307, 67 S. E. 857.

FUNERAL EXPENSES. See Administrators; and Executors; Contracts; Insurance; Liens.

FURNISHINGS. See Fixtures; Landlord and Tenant.

FUTURES. See Contracts; Criminal Law; Sales; Words and Phrases.

Arbitration and award based on contract as to land. Rule applied. Oliver, 114/593, 40 S. E. 826.

Based on transaction in, void. Benton, 114/548, 40 S. E. 811, 58 L. R. A. 181.

Validity of law penalizing keeping of place for dealing in. Arthur, 146/827, 92 S. E. 637.

GAINESVILLE. See Municipal Corporations.

GAME. See Criminal Law.

Act of 1911, terms of offices under. McCleskey, 144/834, 88 S. E. 188.

GAMING. See Contracts; Criminal Law; Lotteries; Sales, catchwords "Futures;" Wages.

GARBAGE. See Municipal Corporations.

GARNISHMENTS.

§§ 5265 et sq.

Abuse of legal process by suing out garnishment, action lies for damages from. King, 136/212, 71 S. E. 131.

Action against garnishee is distinct suit from that against main defendant. Nashville Ry. Co., 3 A. 561, 60 S. E. 319; Holbrook, 114/1, 4, 39 S. E. 937,

938; Jones, 19 A. 216, 91 S. E. 445; Warlick, 120/1071, 48 S. E. 402.

Act of 1901 construed. Odum, 118/792, 45 S. E. 619. Its purpose stated; not intended to violate contracts or restrain right to contract. Mutual Ins. Co., 2 A. 537, 59 S. E. 469; Singer Machine Co., 2 A. 545, 59 S. E. 473.

Of 1904, fixing situs of debt, constitutional. Harvey, 2 A. 569, 60 S. E. 11.

Of 1906 amends act of 1904. Harvey, 2 A. 573, 60 S. E. 11.

Administrator (who was guardian of deceased ward), proceeding against, must strictly comply with statute. National L. Co., 2 A. 750, 59 S. E. 15.

Garnishment of, without allegation of non-residence or insolvency of defendant, void; amendment too late, where garnishee had paid fund into bankruptcy court, under proper order. Joiner, 14 A. 360, 80 S. E. 854. Amendment allowable, when. Stovall, 10 A. 204, 73 S. E. 22.

Right of, to delay answer must be asserted by plea or motion. Morrison, 126/114, 54 S. E. 938.

Subject to garnishment at suit of creditor of distributee. Seagraves, 143/573, 580, 85 S. E. 760.

When garnishment lies against; his share as a distributee reached by, upon his personal debt. Brown, 107/85, 32 S. E. 905.

Affidavit by attorney to obtain, when sufficient. Morrison, 126/114, 54 S. E. 938.

When amendable. Stovall, 10 A. 204, 73 S. E. 22; Joiner, 14 A. 360, 80 S. E. 854.

Not reciting jurisdictional facts, proceeding void. National Lumber Co., 2 A. 750, 59 S. E. 15.

Of illegality by surety on dissolution bond, exemption set up by. Jackson, 18 A. 219, 89 S. E. 184. Defendant in fi. fa. not entitled to interpose affidavit of illegality. Flynn, 18 A. 625, 90 S. E. 83.

Agent, defective return of service on, cured by amendment. Southern Ex-

press Co., 4 A. 399, 61 S. E. 857.
Sufficiency of return of service as to agency. *Holbrook*, 114/1, 4, 39 S. E. 937, 938.

For selling on commission never becoming creditor of principal under their contract, garnishment takes nothing. *Singer Machine Co.*, 2 A. 545, 59 S. E. 473.

Agreement between debtor and garnishee, as to application of fund in garnishee's hands, did not protect from garnishment. *Gittens*, 12 A. 141, 76 S. E. 1051.

Alimony judgment enforceable by successive garnishments to subject monthly salary. *Raines*, 138/791, 76 S. E. 51.

Allegations in personam were not effective to reach debts due to non-resident defendant. *Levy*, 145/245, 88 S. E. 959.

Amendment of proceedings. *Stovall*, 10 A. 204, 73 S. E. 22.

Of answer, not allowed, where the answer was a nullity. *Central Ry. Co.*, 15 A. 294, 82 S. E. 942.

Of entry of service of summons; allowed after judgment, so as to show that officer (described as city-court bailiff) was constable, and that agent was in charge of office, etc. *Southern Express Co.*, 4 A. 399, 61 S. E. 857.

Of original suit so as to conform to affidavit of garnishment, reducing amount claimed. *Seaboard Ry.*, 4 A. 526, 62 S. E. 97.

Amount claimed in affidavit for, may be less than claimed in the original suit; bond may be double the lower amount. *Seaboard Ry.*, 4 A. 526, 62 S. E. 97.

Not payable before end of year, and to be determined then by amount of percentage on sales, after deducting losses; no basis for garnishment. *McKay*, 20 A. 403, 93 S. E. 36.

Not stated in verdict against garnishee, verdict construed with other parts of record. *Harper*, 7 A. 373, 66 S. E. 990.

Ancillary to main suit, but a distinct cause, requiring a separate and independent judgment. *Dent*, 118/853, 45 S. E. 680.

Answer accepted over objection as not filed in time, and exception taken, motion to strike answer not sustained. *Stover*, 114/171, 39 S. E. 864.

Admitted indebtedness to defendant; proceeds of draft held by bank. *Davis*, 108/93, 33 S. E. 815.

Admitting debt, or failure to answer, or sustaining of traverse, not prevent garnishee from contesting validity of judgment. *Ingram*, 2 A. 219, 58 S. E. 372.

Agent's answer for corporation; what must appear as to knowledge and authority. *Central Ry. Co.*, 15 A. 293, 299, 82 S. E. 942.

Amendment stricken as to payment by direction of justice of peace after service of summons requiring answer in city court. *Citizens Bank*, 16 A. 33, 84 S. E. 482.

A nullity, not amendable. *Central Ry. Co.*, 15 A. 294, 82 S. E. 942.

As to amount due "Joseph M. Napier & Co.," where directed to answer as to amount due "Joseph M. Napier trading under the name and style of Joseph M. Napier Co.," not sufficient. *Citizens Bank*, 16 A. 33, 84 S. E. 482.

As waiver of lack of jurisdiction. *Nalley*, 11 A. 17, 74 S. E. 567.

Attorney not an agent qualified to answer. *Central Ry. Co.*, 15 A. 293, 299, 82 S. E. 942.

In nature of interpleader, traversed, and claim filed, in attachment case; question as to jurisdiction. *MacGovern*, 5 A. 393, 63 S. E. 233.

Court must allow attorney's fee for answer, where incurred, but may use discretion as to amount. *Carter*, 15 A. 55, 82 S. E. 628.

Default in. *Morrison*, 126/114, 54 S. E. 938.

Discretion of court to allow answer filed after first term does not extend beyond the second term. *Central Ry. Co.*, 15 A. 294, 82 S. E. 942.

Failure to make, not excused by ignorance, or by reliance on officer's promise to notify. *Jones*, 120/321, 48 S. E. 25.

Answer—(Continued).

Forgery by alteration of. **Nalley**, 11 A. 17, 74 S. E. 567.

Hearsay statement in (of notice of defendant's rights), disregarded. **Darlington**, 13 A. 525, 77 S. E. 653.

Ignorance of law no excuse for non-compliance with requirements as to. **Mashburn**, 12 A. 327, 77 S. E. 207.

In city court, when not in default. **Averback**, 122/18, 49 S. E. 748.

Must be filed (though bond given to dissolve), to authorize further proceedings. **Henry**, 116/9, 42 S. E. 383.

Must be taken as true unless traversed. **Harris**, 17 A. 700, 88 S. E. 40.

No error in allowing second. **Patterson Co.**, 1 A. 430, 57 S. E. 1047.

Not expressly admitting or denying debt, but stating facts showing indebtedness, treated as admission; no traverse necessary, to authorize judgment against garnishee. **Harris**, 17 A. 700, 88 S. E. 40. Time for traverse of answer. **Woods**, 17 A. 422, 87 S. E. 688.

Not filed at return term of summons, judgment on, after judgment against principal debtor, concludes garnishee. **Davis**, 112/106, 37 S. E. 169.

Not filed in due time. **Smith**, 20 A. 487, 93 S. E. 105. Time of filing traverse to answer. **Hendricks**, 20 A. 103, 92 S. E. 395.

Not filed in time, but good reasons given for not filing sooner, error in striking. **Atlanta Journal**, 111/718, 36 S. E. 929.

Not traversed, admitting indebtedness to defendant as individual, prevented claim to fund by him as head of family. **Weichselbaum**, 20 A. 204, 92 S. E. 1014.

Not traversed, plaintiff not entitled to judgment on dissolution bond, when. **Kuniansky**, 9 A. 482, 71 S. E. 777.

Of garnishee setting up exemption, need not be traversed if defendant give dissolution bond; garnishee discharged on paying money. **Jackson**, 18 A. 219, 89 S. E. 184.

Oral, in open court, after defective service, if accepted by plaintiff, binding. **Dooley**, 101/797, 29 S. E. 118.

Answer—(Continued).

Required, though garnishment, dissolved. **Garden**, 112/274, 37 S. E. 368.

Signature with representative capacity added; when treated as merely individual signature. **Central Ry. Co.**, 15 A. 300, 82 S. E. 942.

Time of filing traverse to answer. **Lane**, 12 A. 763, 78 S. E. 725.

To be made at return term of attachment on which issued in justice's court. **National Bank**, 4 A. 46, 61 S. E. 841.

To be taken as true, unless traversed; but not to be so accepted as to conclusion of law. **Darlington**, 12 A. 522, 77 S. E. 653.

How traversed. **Barkley**, 3 A. 101, 59 S. E. 440.

In behalf of corporation, may be verified by any agent who can swear positively. **Walker**, 3 A. 283, 59 S. E. 850.

In behalf of corporation, verified by bookkeeper swearing positively, sufficient. **Woodward Lumber Co.**, 8 A. 114, 68 S. E. 622.

Too late, where filed after judgment on garnishment. **Farmers & Traders Bank**, 9 A. 128, 70 S. E. 602.

Too late, where not filed by or on first day of second term of city court; court had no discretion to extend time for filing, for reasons assigned. **Mashburn**, 12 A. 327, 77 S. E. 207.

"To the best of [affiant's] knowledge, information, and belief," no verification. **Central Ry. Co.**, 15 A. 294, 300, 82 S. E. 942.

Traversed, burden on plaintiff to sustain traverse. **Barksdale**, 15 A. 16, 82 S. E. 664.

Treated as true until traversed. **Joiner**, 14 A. 363, 80 S. E. 854. Notice of traverse to, how served. **Vaughan**, 14 A. 9, 79 S. E. 1130.

When not necessary to authorize judgment. **Albright Co.**, 126/499, 55 S. E. 251, 115 Am. St. R. 108.

Appeal, right of, determined by amount claimed in pleadings, not amount of garnishee's indebtedness. **Hart**, 8 A. 825, 70 S. E. 193.

Application of money or property by garnishee without judicial direction, at his own risk. *Barkley*, 3 A. 101, 59 S. E. 440.

Assignment of debt, as affecting. *Sasser*, 9 A. 177, 70 S. E. 980. Assigning and transferring, or sending from State accounts or claims, for attachment and garnishment, to evade law exempting, prohibited by act of 1898. *Traders Investment Co.*, 3 A. 129, 59 S. E. 454.

Of fund, agreement as to appropriation of proceeds of accounts to be collected was not. *Hargett*, 107/773, 33 S. E. 666.

Of fund, when not effected by check. *Kirby Planing Mills Co.*, 14 A. 1, 80 S. E. 18.

Of money coming under compromise settlement of claim for damages, when did not defeat. *Fouché*, 112/144, 37 S. E. 182.

Of particular fund, before service of, superior to, though garnishee not notified. Effectual as to money to become due under existing contract. *Walton*, 112/814, 38 S. E. 105, 81 Am. St. R. 77.

Void as to creditors; assets in hands of assignee subject to garnishment. *Jaques & Tinsley Co.*, 131/2, 62 S. E. 82; *Jaques & Tinsley Co.*, 4 A. 581, 62 S. E. 90.

Attachment as basis of. Declaration in attachment and judgment thereon are no part of record in garnishment proceeding. *Leffler*, 121/44, 48 S. E. 710.

Invalidity of judgment against defendant in, is no ground for arresting judgment against garnishee. *Leffler*, 121/40, 48 S. E. 710.

Want of valid judgment against debtor, no ground of illegality as to garnishee in default. *Warner*, 144/547, 87 S. E. 667.

Executed by service of garnishment. *Central Ry. Co.*, 130/434, 60 S. E. 1060.

Law of, when applied to garnishment. *Light*, 17 A. 491, 87 S. E. 763.

Attorney at law may make affidavit to obtain, against administrator. *Albright*

Co., 126/499, 55 S. E. 251, 115 Am. St. R. 108.

Garnishment of, by creditors of client, as defense to rule for money collected. *Ewing*, 103/811, 30 S. E. 637.

Contingent fee of, for obtaining judgment can not be reached by garnishment against the judgment debtor. *Modlin*, 13 A. 259, 79 S. E. 82.

Lien of, for fee for bringing suit, defeated by allowing garnishing creditor of plaintiff to take judgment against defendant. *Watters*, 7 A. 778, 68 S. E. 450.

Lien of, when prevails over claim of garnishing creditor. *Hargett*, 107/773, 33 S. E. 666.

With money collected in suit for two clients, not allowed to set up, in answer to garnishment, that the money belonged to one alone. *Harris*, 18 A. 459, 89 S. E. 534.

Available to creditor, to reach debtor's choses in action; not his right of action for tort. *Williams*, 122/180, 50 S. E. 52, 106 Am. St. R. 100.

Award of fund on, to one judgment creditor, as against another whose judgment was void as to the first. *Ainsworth*, 102/123, 29 S. E. 142.

Bank, service on president of, prima facie sufficient. *Third National Bank*, 108/249, 33 S. E. 848.

Collusion by, to prevent garnishment by keeping depositor's account in fictitious name. *Bank of Lawrenceville*, 129/582, 59 S. E. 291.

Deposit in, of check, in name of one who had received it to take up his note to the maker of the check when the note should be presented by an indorsee, was a trust fund for that purpose and not subject to garnishment by another creditor. *Bostwick-Gooddell Co.*, 19 A. 61, 90 S. E. 975.

Deposit (special), when not reached by. *Hillsinger*, 108/357, 33 S. E. 985, 75 Am. St. R. 42.

Deposit, to be paid on certain checks, whether subject to. *Neely*, 7 A. 392, 392, 393, 66 S. E. 1099.

Draft collected by, for non-resident drawer, proceeds subject. **Nashville Produce Co.**, 121/278, 48 S. E. 945.

Bankruptcy and discharge, as affecting; when must be pleaded before judgment. **Farmers & Traders Bank**, 9 A. 128, 70 S. E. 602.

As affecting garnishment. **Albany Ry. Co.**, 8 A. 176, 68 S. E. 868; **Citizens Bank**, 16 A. 33, 84 S. E. 482; **Light**, 17 A. 491, 87 S. E. 763; **National Surety Co.**, 2 A. 665, 58 S. E. 1131.

Garnishee may set up invalidity of garnishment proceeding because of; may also show that fund earned after bankruptcy was exempt. **Armour Co.**, 119/683, 46 S. E. 865.

Trustee or assignee in, not subject; though specified fund ready to be paid over. **Cowart**, 134/544, 68 S. E. 500, 30 L. R. A. (N. S.) 720.

Bar of statute of limitations, third person can not take advantage of, on issue as to indebtedness. **Lee**, 15 A. 249, 82 S. E. 941.

Bond, action for breach of, is ex contractu. **Lovejoy**, 105/252, 31 S. E. 164.

No judgment on, for expense incurred by garnishee in answering. **Brunswick Bank**, 122/189, 50 S. E. 44.

On suing out garnishment; summons may issue from time to time before trial, without additional bond except in cases of attachment. **Woods**, 17 A. 422, 87 S. E. 688.

Payable to two defendants jointly, no basis for proceeding against one alone. **Schuer**, 18 A. 205, 89 S. E. 168.

Proper amount of. **Seaboard Ry.**, 4 A. 526, 62 S. E. 97.

Sufficiency of; burden of proof on party asserting insufficiency; non-return of property for taxation did not require inference that surety had none. **Stephens**, 8 A. 639, 70 S. E. 55.

To dissolve, action on. **Taylor**, 7 A. 220, 66 S. E. 628.

To dissolve, by defendant in attachment, does not authorize judgment in personam against him. **Henry**, 116/9,

42 S. E. 383; **Beasley**, 116/13, 42 S. E. 385.

To dissolve, different from statutory bond, not prevent judgment against garnishee. **Warlick**, 120/1070, 48 S. E. 402.

To dissolve, effect of, as to setting up exemption. **Jackson**, 18 A. 219, 89 S. E. 184.

To dissolve, effect of recital in, and of judgment on. **Drought**, 3 A. 178, 59 S. E. 728.

To dissolve, fatally defective, garnishee not protected by notice of dissolution, in paying money. **Fitzgerald Band**, 115/790, 42 S. E. 70.

To dissolve, in case against a firm, executed by one "as principal and as member of" the firm, good. **Maddox**, 109/787, 35 S. E. 155.

To dissolve, judgment on, despite adjudication in bankruptcy. **National Surety Co.**, 2 A. 665, 58 S. E. 1131.

To dissolve, limit of liability on. **Garden**, 112/276, 37 S. E. 368.

To dissolve, must be statutory bond, to authorize summary judgment against sureties. **Roney**, 128/252, 57 S. E. 503.

To dissolve, presumption as to officer's compliance with law. **Turner's Chapel**, 121/377, 49 S. E. 272.

To dissolve; proper judgment on. **Middleton**, 19 A. 478, 91 S. E. 785.

To dissolve, purporting to relate to case in county of A, no basis for summary judgment against sureties in case between the same parties in county of B. **Roney**, 128/249, 57 S. E. 503.

To dissolve, substantial compliance with statute, as to condition of. **Maddox**, 109/788, 35 S. E. 155.

To dissolve, surety on, can not be surety on appeal. **Harvey**, 112/822, 38 S. E. 41.

Burden of proof on plaintiff, upon traverse. **Lee**, 2 A. 337, 58 S. E. 520.

On plaintiff to show that debt to non-resident was payable in this State. **Padrosa**, 122/264, 50 S. E. 97.

Carrier as garnishee had no money belonging to holder of bill of lading, un-

der facts here. *Collins*, 122/655, 50 S. E. 477.

Garnishment against final carrier holding proceeds of shipper's draft for price of goods. *Southern Ry. Co.*, 148/851, 98 S. E. 541; 23 A. 536, 99 S. E. 41.

Certified copy of affidavit and bond, entry of making and transmission of, need not appear on original, where based on suit pending in other county. *Carr*, 118/634, 45 S. E. 464.

Certiorari by garnishee, defendant not usually proper party to. *Mitchell*, 7 A. 824, 68 S. E. 343.

Check, as affecting garnishment against maker. *Kirby Planing Mill Co.*, 14 A. 1, 80 S. E. 18.

Mailed before service; fund on which drawn not subject to, unless check subject to recall. *Parker-Fain Co.*, 1 A. 628, 57 S. E. 1074; *Watt-Harley-Holmes Co.*, 1 A. 647, 57 S. E. 1033.

Postdated, garnishment on, against drawer did not lie. *Wilson*, 9 A. 584, 71 S. E. 946.

To debtor, deposited with bank and forwarded for collection, liability of bank as garnishee not shown by facts here. *Rockmart Bank*, 14 A. 238, 80 S. E. 673.

City court's jurisdiction of. *Albany Ry. Co.*, 8 A. 176, 68 S. E. 868.

Claimant entitled to attack garnishment proceedings at any stage; not estopped from by giving bond to dissolve. *Schuer*, 18 A. 205, 89 S. E. 168. His traverse of answer does not preclude him from attacking plaintiff's bond. *Ib.*

Giving bond to dissolve, in attachment case, may become a party to all subsequent proceedings, and may take advantage of any defect in his adversary's pleadings. *Callaway*, 123/208, 51 S. E. 320.

Not entitled to judgment without traversing garnishee's answer admitting indebtedness. *Booth*, 6 A. 299, 64 S. E. 1103.

Of fund in garnishee's hands and who dissolved garnishment was party to is-

sue formed by plaintiff's traverse of garnishee's answer. *St. Paul Ins. Co.*, 113/786, 39 S. E. 483.

Remedy of, where garnishee admitted indebtedness to defendant, and the debt had been transferred to the claimant before garnishment. *Booth*, 6 A. 300, 64 S. E. 1103.

Surety for, concluded by judgment, as to questions here. *Jordan*, 5 A. 537, 63 S. E. 601.

When not bound by judgment in county other than that in which claim filed. *Wingo*, 119/486, 46 S. E. 669.

Claim must be filed; recital in bond for use of one named does not make usee a party claimant. *Drought*, 3 A. 178, 59 S. E. 728.

Not entertained after final judgment in favor of plaintiff against garnishee. *Booth*, 6 A. 299, 64 S. E. 1103.

Prevails, title having passed to claimant before service of garnishment. *Elberton Grocery Co.*, 3 A. 413, 59 S. E. 1129.

Title only issue on. *Commercial City Bank*, 18 A. 609, 90 S. E. 173.

To fund should be filed in court which has control of fund. *Page*, 109/558, 34 S. E. 1016. Disposed of as in ordinary claim cases. *Jackson*, 23 A. 642, 99 S. E. 155.

Clerk or bookkeeper in office, wages of, subject. He is not a "laborer." *Hunter*, 108/409, 33 S. E. 986; *Boynton*, 108/794, 33 S. E. 876.

Collateral security, garnishment against holder of, ineffectual to reach surplus, when. *Smith*, 10 A. 280, 73 S. E. 428.

Compromise of tort, sum paid in, garnishable. *Lee*, 2 A. 337, 58 S. E. 520.

Consolidation of two suits upon different causes of action, in affidavit and bond, and suing out one summons based on, illegal. *Morgan*, 111/835, 36 S. E. 99.

Constitutionality of statute exempting wages from, not properly questioned. *Newkirk*, 120/1048, 48 S. E. 426.

Contempt in failing or refusing to answer. *Garden*, 112/274, 37 S. E. 368.

Contract relation without breach, no basis of judgment on. *Butler*, 101/102, 28 S. E. 615.

Copy affidavit and bond, purpose of, and time of transmitting, where proceedings are in different counties. *A. & W. P. R. Co.*, 6 A. 405, 65 S. E. 165.

Corporation, garnishment based on judgment against, could not subject funds of an individual conducting business under the corporate name. *Todd*, 17 A. 113, 86 S. E. 284.

Returns of service on agents of, what sufficient, and what not so. *Holbrook*, 114/1, 4, 39 S. E. 937, 938.

Return of service on, by serving person described merely as "supt.," insufficient. *Southern Ry. Co.*, 103/564, 29 S. E. 760.

Return reciting service on cashier of bank, but not that he was agent in charge of its office or business, insufficient. *North Ga. Bkg. Co.*, 23 A. 683, 99 S. E. 229.

Who may answer for, and what the answer should show; attorney not an agent qualified to answer. *Central Ry. Co.*, 15 A. 293, 299, 82 S. E. 942.

Costs, expenses of garnishee in preparing answer, including attorney's fees, when taxed as, though truth of answer not decided on trial of traverse thereof. *Paton*, 114/626, 40 S. E. 760.

Counties different, proceedings in. *A. & W. P. R. Co.*, 6 A. 405, 65 S. E. 165. Proceedings in, not connected here. *Wingo*, 119/488, 46 S. E. 669. County other than that in which judgment was obtained, garnishment in. *Central Ry. Co.*, 15 A. 293, 82 S. E. 942.

Creditor can not recover by, more than his debtor could. *Southern Grain Co.*, 127/630, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 119 Am. St. R. 356, 9 Ann. Cas. 437.

Is in no better position as against garnishee than the debtor is. *Modlin*, 13 A. 263, 79 S. E. 82; *Southern Amusement Co.*, 15 A. 132, 82 S. E. 765. Garnishment adds no privilege. *Singer Machine Co.*, 2 A. 545, 59 S. E. 473.

Of one who fraudulently transferred property, not entitled to reach by garnishment money due on policy issued

to transferee, when. *St. Paul Ins. Co.*, 113/786, 39 S. E. 483.

Cropper exempt from, as to net amount due him by landlord, when. *Thompson*, 9 A. 771, 72 S. E. 185.

Share of, in hands of landlord, when not reached by. *Darlington*, 12 A. 523, 77 S. E. 653. Question not properly raised here. *Ib.*

Damages, money agreed to be paid to settle suit for, subject. *Lee*, 2 A. 337, 58 S. E. 520.

Date incorrect, given in affidavit for, as date on which affidavit was made; true date shown, to uphold judgment. *Mutual Fertilizer Co.*, 18 A. 495, 89 S. E. 602.

Debt not created by contract without legal consideration. *Willingham*, 117/850, 45 S. E. 237.

Paid by agent of garnishee, after service of summons and in ignorance of garnishment; garnishee not relieved. *A. & W. P. R. Co.*, 6 A. 407, 65 S. E. 165.

Default, garnishee not in, for failing to answer at appearance term, or pending motion to set aside judgment rendered at that term. *Averback*, 122/18, 49 S. E. 748.

In answer, entry of judgment on. *Morrison*, 126/115, 54 S. E. 938.

In answering, several terms elapsing, no answer allowed. *O'Neill*, 110/656, 36 S. E. 66.

Judgment by, against garnishee, motion to set aside; grounds insufficient here. *Clarke*, 113/1053, 39 S. E. 479. When no error in setting aside, on motion. *Dannenberg*, 137/111, 72 S. E. 906.

Judgment by, against garnishee, without legal return of service, invalid; not cured by amendment of return. *News Printing Co.*, 113/160, 38 S. E. 333.

Judgment by, not set aside for inadvertent omission to answer, return of service being untraversed. *Able*, 141/23, 80 S. E. 287.

Judgment by, when set aside, where answer filed before expiration of return term of summons. *O'Donovan*, 1 A. 190, 57 S. E. 982.

- Of garnishee as to answer does not deprive him of right to demand valid judgment against main defendant before final judgment against himself. *Nashville Ry. Co.*, 3 A. 561, 60 S. E. 319.
- Judgment by, resulting from mistake in answering, not set aside in equity. *Georgia Mausoleum Co.*, 147/224, 93 S. E. 200.
- Discharge**, ex parte order granting, where garnishee, on dissolution, paid money into court instead of to defendant, set aside. *Turner's Chapel*, 121/377, 49 S. E. 272.
- Of garnishee on paying money into court. *Jackson*, 23 A. 642, 99 S. E. 155.
- No bar to judgment in favor of plaintiff in garnishment here. *Light*, 17 A. 491, 87 S. E. 763.
- Discretion** to allow answer filed after default. *Jones*, 120/321, 48 S. E. 25.
- Dismissal**; motion to dismiss garnishment, not reach attachment. *National Bank*, 4 A. 46, 61 S. E. 841.
- Disregard** of summons at peril. *Lee*, 2 A. 337, 58 S. E. 520. But void process need not be answered. *National Lumber Co.*, 2 A. 763, 59 S. E. 15.
- Dissolution** by defendant, effect of, as to parties, necessity for traverse, etc. *Leake*, 112/921, 38 S. E. 843.
- By claimant of part of the indebtedness, not allowed. *First National Bank*, 140/737, 79 S. E. 781.
- Clerk of court not required to give notice of; one who acts on such notice does so at his peril. *Fitzgerald Band*, 115/790, 42 S. E. 70.
- In case of attachment against foreign corporation; presumption that officer taking bond acted on proof that the corporation was not incorporated in this State. *Turner's Chapel*, 121/376, 49 S. E. 272.
- Dormant judgment** not enforced by means of. *Ingram*, 2 A. 218, 58 S. E. 372.
- Double liability** of garnishee, prevented by vouching transferee of debt into court. *Sasser*, 9 A. 177, 70 S. E. 980.
- Draft discounted**, proceeds of, were not subject to attachment against drawer. *Merchants Bank*, 142/265, 82 S. E. 658.
- Duty** of garnishee as to making defenses. *Armour Co.*, 119/684, 46 S. E. 865.
- Employee's salary** not reached by, if drawn ahead, even after service, and to prevent being reached by. *Hall*, 102/586, 29 S. E. 139.
- Equitable garnishment**. *Glover*, 101/827, 29 S. E. 36. By indorser or surety, proceeding in nature of, to compel payment of debt due though not sued on. *Cooper*, 132/529, 64 S. E. 650.
- Petition for receiver to collect, when maintained. *Atlas Asso.*, 110/573, 35 S. E. 772. But see *Bush*, 110/472, 35 S. E. 640.
- Pleading in superior court; when necessary aid to. *Southern Grain Co.*, 127/626, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 119 Am. St. R. 356, 9 Ann. Cas. 437.
- Pleading necessary to aid, in reaching surplus of collateral. *Smith*, 10 A. 280, 73 S. E. 428.
- Relief not granted to garnishee failing to avail himself of legal defense, to prevent paying same debt twice. *Collier*, 128/422, 57 S. E. 691.
- Remedy to impound fund, in lieu of garnishment. *Spence*, 129/34, 58 S. E. 463.
- Error** in summons, no excuse for default of answer. *Milner*, 145/55, 88 S. E. 553.
- Estoppel** to deny title to fund. *Harris*, 18 A. 459, 89 S. E. 534.
- Evidence** circumstantial as to indebtedness of garnishee, sufficient here. *Harper*, 7 A. 373, 66 S. E. 990.
- Insufficient to show indebtedness of garnishee. *Barksdale*, 15 A. 16, 82 S. E. 664.
- Exemption** a personal privilege, as distinguished from a right. Law conferring it has no extra-territorial effect. *Harvey*, 2 A. 569, 60 S. E. 11.
- Burden of proof as to. *Steele*, 109/791, 35 S. E. 167.
- Claim of, sustained, where garnishee paid amount of wages into court, and

Exemption—(Continued).

continued to pay wages to laborer on guaranty of manager. *Couch*, 126/62, 54 S. E. 813.

Error in dividing wages and treating part as subject and part as exempt in proportion to the relative extent of manual and mental work. *Ga. Ry. & Power Co.*, 15 A. 243, 248, 82 S. E. 932.

Includes monthly wages of locomotive engineer employed by railroad company. *Smith*, 119/615, 46 S. E. 831. Also, brakeman's wages. *Franklin*, 119/855, 47 S. E. 344.

Garnishee failing to set up exemption of wages he owes defendant is not protected from suit by him. *Southern Ry. Co.*, 125/103, 54 S. E. 68, 5 Ann. Cas. 168.

In behalf of defendant may be set up by garnishee. *Woodward Lumber Co.*, 8 A. 114, 68 S. E. 622. Former decisions sound. *Walker*, 3 A. 283, 59 S. E. 850.

Not include photographer's wages. *Mathewson*, 15 A. 706, 84 S. E. 174.

Of clerk's wages. *Pike*, 115/688, 42 S. E. 58.

Of laborer's wages, includes monthly wages of person employed to check cotton as weighed and classified, and who also works as stenographer, typewriter, and letter filer. *Langley*, 10 A. 753, 73 S. E. 1074.

Of laborer's wages includes stenographer's salary, when. *Cohen*, 5 A. 256, 62 S. E. 1015. Wages of night watchman at factory, when exempt. *McAdams*, 5 A. 262, 62 S. E. 1001.

Of laborer's wages includes wages of gatekeeper at railway depot, when. *Central Ry. Co.*, 11 A. 87, 74 S. E. 713.

Of laborer's wages; test as to who is a laborer." *Ga. Ry. & Power Co.*, 15 A. 243, 248, 82 S. E. 932.

Of laborer's wages; what constitutes a "laborer," within the meaning of the law. *Stothart*, 117/460, 43 S. E. 801.

Of laborer's wages, when not applied to forwarding and shipping clerk of railroad company. *Kline*, 113/1085, 39 S. E. 477.

Exemption—(Continued).

Of wages, by law of this or another State, no protection to non-resident debtor, before act of 1906. *Harvey*, 2 A. 569, 60 S. E. 11.

Of wages from. *Tabb*, 120/100, 47 S. E. 587, 102 Am. St. R. 78. Though paid according to amount of work and not to time. *Johnson*, 120/1002, 48 S. E. 383.

Of wages; liberal construction of statute. *Thompson*, 9 A. 772, 72 S. E. 185. Test as to who is laborer. *Ib.* 773. Exemption includes indebtedness to cropper, when. *Ib.* 771.

Stenographer's salary, question as to, certified to Supreme Court, for review of former decision. *Empire Investment Co.*, 6 A. 859, 65 S. E. 1099.

Of wages, does not include conductor of freight-train. *Robinson*, 6 A. 203, 64 S. E. 717.

Where compensation was measured by amount of work done. *Moultrie*, 125/82, 54 S. E. 197; *Prather*, 125/808, 54 S. E. 663.

Whether clerk or other employee is within laborer's exemption is generally a question of fact, dependent on whether his duties are mainly physical or mental. *Buchanan*, 8 A. 565, 70 S. E. 28.

Set up by defendant, by rule against constable to whom garnishee had paid fund; the creditor was proper party to rule. When incumbent on movant to traverse answer to rule. *Steele*, 109/791, 35 S. E. 167.

Set up by sureties on dissolution bond, by affidavit of illegality. *Jackson*, 18 A. 219, 89 S. E. 184.

Under State law, as to receiver of railroad, not applicable to receiver appointed by U. S. court. *Lamb*, 17 A. 687, 87 S. E. 1095.

Fee for answer, error in not allowing. *Carter*, 15 A. 55, 82 S. E. 628.

Foreclosure of laborer's lien, no basis for garnishment, when. *Weston*, 10 A. 26, 73 S. E. 404; *Lane*, 12 A. 760, 78 S. E. 725.

Foreign corporation, when could not maintain suit against another, by serving in

- this State an agent of a third. *Asso. Press*, 104/54, 29 S. E. 869.
- Fraudulent transfer of effects; liability of transferee to creditors of transferor.** *Jaques & Tinsley Co.*, 131/2, 62 S. E. 82. **Fraudulent transferee, garnishment of.** *Stovall Co.*, 10 A. 500, 73 S. E. 761.
- Fund of debtor in bailee's hands to be paid to third person, subject, when.** *Bluthenthal*, 113/102, 38 S. E. 344.
- Additional, brought in after jurisdiction acquired, judgment may operate on.** *Albright Co.*, 126/498, 55 S. E. 251, 115 Am. St. R. 108.
- Goods sold in bulk without complying with act of 1903; garnishment of purchaser.** *Stovall Co.*, 10 A. 500, 73 S. E. 761.
- Buyer liable in garnishment to creditor of seller, though goods disposed of before garnishment served.** *Jaques & Tinsley Co.*, 131/2, 62 S. E. 82; s. c. 4 A. 581, 62 S. E. 90.
- Homestead exemption, effect of garnishee's answer setting up defendant's claim of.** *Darlington*, 12 A. 522, 77 S. E. 653.
- Illegality of proceeding, defendant could take advantage of, though he had given bond and dissolved the garnishment.** *Morgan*, 111/835, 36 S. E. 99.
- When not remedy of garnishee.** *Central Ry. Co.*, 5 A. 514, 63 S. E. 639; *Moultrie Packing Co.*, 23 A. 44, 97 S. E. 552.
- In custodia legis; fund so held, not subject.** *Cowart*, 134/548, 68 S. E. 500, 30 L. R. A. (N. S.) 720.
- When money deposited with court officer is not.** *Sparks*, 131/563, 62 S. E. 989.
- Indebtedness of garnishee, when ascertained by comparison of claims or accounts.** *Mutual Ins. Co.*, 2 A. 537, 59 S. E. 469.
- Independent contractor's pay subject to.** *Johnson*, 120/1002, 48 S. E. 383.
- Injunction against, as pending proceeding by non-resident of the county, when lies. Petition here demurrable.** *Crawley*, 132/96, 63 S. E. 819.
- To stay execution, not granted to garnishee in default.** *Milner*, 145/55, 88 S. E. 553.
- When not granted to restrain garnishment.** *Teft*, 104/590, 30 S. E. 803.
- Insurance money subject to, though dissolved, and burned house rebuilt therewith.** *Ennis*, 101/282, 28 S. E. 839.
- Interpleader between garnishing creditors and assignees of fund, when ordered at instance of stakeholder.** *W. & A. R. Co.*, 128/74, 57 S. E. 100.
- Petition for, by garnishee, as stakeholder, when court erred in granting.** *Franklin*, 119/855, 47 S. E. 344.
- Judgment against debtor, direction by Supreme Court that judgment against garnishee abide result of, where question as to validity of former was pending when latter was affirmed.** *Phillips*, 105/849, 32 S. E. 647.
- Against defendant in attachment, prerequisite to final judgment against garnishee.** *Baker*, 20 A. 799, 93 S. E. 496.
- Against defendant in main suit must affirmatively appear, before judgment against garnishee.** *Fagan*, 1 A. 24, 57 S. E. 1052. **Not on trial of issue by traverse of answer.** *Parker-Fain Co.*, 1 A. 630, 57 S. E. 1074.
- Against defendant, when looked to, for amount of judgment against garnishee, without formal tender in evidence.** *Morrison*, 126/115, 54 S. E. 938.
- Against garnishee; affidavit of illegality not remedy for error in rendering judgment by default, after he has been duly served or has answered.** *Arnold-Forrest Co.*, 9 A. 483, 71 S. E. 766.
- Against garnishee as by default, for non-production of papers, when error to render.** *Central R. Co.*, 2 A. 428, 58 S. E. 674.
- Against garnishee concludes him as to validity of judgment against main debtor.** *Holbrook*, 114/1, 39 S. E. 937. **Accepting answer over objection binds plaintiff until reversed or set aside.** *Stover*, 114/171, 39 S. E. 864.

Judgment—(Continued).

Against garnishee concludes as to what. *Warlick*, 120/1070, 48 S. E. 402; *Wingo*, 119/46 S. E. 669; *Leffler* 121/43, 48 S. E. 710.

Against garnishee, discretion as to setting aside. *Central Ry. Co.*, 15 A. 294, 82 S. E. 942. Discretion not abused in setting aside. *Read Phosphate Co.*, 23 A. 659, 99 S. E. 137.

Against garnishee may proceed pending motion by main debtor for new trial (without supersedeas), subject to result of that motion. *Liverpool Ins. Co.*, 143/355, 85 S. E. 114.

Against garnishee not answering, arrested because of invalidity of antecedent proceedings. *Leffler*, 126/662, 55 S. E. 927.

Against garnishee, not reversed because of mere informalities, when. *Harris*, 17 A. 700, 88 S. E. 40.

Against garnishee, not set aside for defects in the record in the main case. *Warlick*, 120/1072, 48 S. E. 402.

Against garnishee, unauthorized under previous decisions. *Bridges*, 3 A. 295, 59 S. E. 826; *Nashville Ry. Co.*, 3 A. 563, 60 S. E. 319.

Against garnishee, when not relieve him of liability to the party to whom he was originally indebted. *Armour Co.*, 119/684, 46 S. E. 865.

Against principal debtor proved by introduction of fi. fa., on trial of plea of exemption. *Travis*, 120/908, 48 S. E. 356.

As basis of, must be in personam, not in rem. *Weston*, 10 A. 261, 73 S. E. 404.

As basis of, proved by certified copy of it, without record of case wherein rendered. *Hirsch*, 130/556, 61 S. E. 225.

By default against garnishee, at appearance term, illegal. *Averback*, 122/18, 49 S. E. 748.

Against garnishee not authorized before proof of judgment obtained against defendant. *Am. Groc. Co.*, 116/813, 43 S. E. 49; *Whaley*, 139/16, 76 S. E. 390; *Kelly*, 8 A. 551, 70 S. E. 27; *Mitchell*,

Judgment—(Continued).

7 A. 824, 68 S. E. 343; *South Georgia Grocery Co.*, 12 A. 213, 77 S. E. 6.

Conclusiveness of; garnishee not answering until after judgment against himself, not allowed to attack antecedent judgment against main debtor. *Farmers & Traders Bank*, 9 A. 128, 70 S. E. 602.

Creditor may acquire control over choses in action of debtor (subject to exceptions, as to torts, etc.) cum onere; but can not reach assets debtor could not recover. *Holmes*, 1 A. 338, 58 S. E. 281.

Does not bind property lawfully sold by garnishee before its date, though after summons. *McCranie*, 146/803, 92 S. E. 533.

Erroneous but not void, garnishee or claimant not heard to attack. *Field*, 122/503, 50 S. E. 346. Setting aside, of, on petition of garnishee. *Union Com. Co.*, 122/640, 50 S. E. 483.

In accordance with garnishee's answer, he can not complain of. *A. & W. P. R. Co.*, 6 A. 405, 65 S. E. 165.

In main case concludes garnishee; if void, he may object to it as evidence, before judgment against himself, but can not attack it afterward. *Central Ry. Co.*, 5 A. 514, 63 S. E. 639.

In main case is no part of pleading in garnishee's case; it is evidence necessary to warrant judgment against him. *Central Ry. Co.*, 5 A. 514, 63 S. E. 639.

Jointly against defendant and garnishee, void as to the latter. *Dent*, 118/853, 45 S. E. 680.

Jointly against garnishee and main defendant, grossly irregular; void as against garnishee, and not amendable by converting it into two separate judgments. *Nashville Ry. Co.*, 3 A. 561, 60 S. E. 319.

No right to, against garnishee until after actual entry of judgment against defendant. *Dent*, 118/853, 45 S. E. 680.

Not authorized until answer filed, though bond given to dissolve. *Henry*, 116/9, 42 S. E. 383.

Not entered by default against garnishee, on bond to dissolve, until answer filed and judgment thereon, fixing amount, and adjudicating fund or property subject. **Garden**, 112/374, 37 S. E. 368.

On attachment against non-resident, not authorized without answer by garnishee. **Albright Co.**, 126/499, 55 S. E. 251, 115 Am. St. R. 108; **Baker**, 20 A. 799, 93 S. E. 496. Where garnishee denies indebtedness, jurisdiction depends on sustaining traverse to answer. *Id.*

On bond to dissolve, concludes usee therein, as well as defendant who executed it. **Drought**, 3 A. 178, 59 S. E. 728.

On bond to dissolve, not preceded by judgment against garnishee, though reciting the contrary, open to affidavit of illegality of principal and sureties. **Smith**, 125/830, 54 S. E. 731.

On bond to dissolve, plaintiff not entitled to, where no previous judgment against main defendant, and no traverse of garnishee's answer setting up exemption. **Kuniansky**, 9 A. 482, 71 S. E. 777.

On bond to dissolve, two prior judgments requisite to. **National Surety Co.**, 2 A. 669, 58 S. E. 1131.

Concludes garnishee; but is subject to attack by defendant on ground that execution was settled by payment before garnishment sued out. **Warthen**, 132/113, 63 S. E. 832, 131 Am. St. R. 184.

On irregular proceeding, as basis of. **Artops**, 110/346, 35 S. E. 657.

On which based, rendered in a different county from that in which summons issued, unnecessary to back file. **A. & W. P. R. Co.**, 6 A. 405, 65 S. E. 165.

Setting aside of, when no error. **O'Donovan**, 1 A. 190, 57 S. E. 982; **Patterson Co.**, 1 A. 430, 57 S. E. 1047.

Void for want of jurisdiction. **National Lumber Co.**, 2 A. 750, 59 S. E. 15.

When debtor not concluded by. **Teft**, 104/590, 30 S. E. 803.

When conclusive against administrator and prima facie binding on his sureties. Defenses sureties may set up. **Brown**, 107/85, 32 S. E. 905.

Jurisdiction given by answer of garnishee. **Lamb**, 17 A. 687, 87 S. E. 1095.

Lack of, waived by garnishee filing answer. **Nalley**, 11 A. 17, 74 S. E. 567.

Waived by garnishee appearing and pleading. **Citizens National Bank**, 16 A. 533, 86 S. E. 403.

Not acquired as to principal defendant, garnishee paying money into court is liable again. **Southern Ry. Co.**, 106/566, 32 S. E. 658, 71 Am. St. R. 279.

Of garnishment against domestic railroad corporation. **Central Railway Co.**, 130/434, 60 S. E. 1060.

Of claim to fund raised by, and properly paid into city court, superior court has not. **Page**, 109/557, 34 S. E. 1016.

To issue summons returnable to court of another county. **Albany Ry. Co.**, 8 A. 174, 175, 68 S. E. 868.

Justice of the peace holding moneys collected by and belonging to constable, when subject. **Sparks**, 131/563, 62 S. E. 989.

Knowledge, as basis of agent's answer. **Central Ry. Co.**, 15 A. 293, 82 S. E. 942.

Laborer, meaning of. **Langley Mfg. Co.**, 10 A. 753, 73 S. E. 1074; **Central Ry. Co.**, 11 A. 87, 74 S. E. 713; **Thompson**, 9 A. 773, 72 S. E. 185.

Money of, in hands of employer's agent (bank), not subject to. **Hill**, 116/45 S. E. 475.

Wages exempt from. **Couch**, 126/62, 54 S. E. 813.

Police watchman for railway and wharf not a laborer. **Tabb**, 120/97, 47 S. E. 587, 102 Am. St. R. 78. Locomotive engineer is a laborer. **Johnson**, 120/1002, 48 S. E. 383.

When collector is not a laborer. **Williams**, 116/705, 43 S. E. 57.

Test as to who is, under exemption law. **Cohen**, 5 A. 259, 62 S. E. 1015; **Robinson**, 6 A. 203, 64 S. E. 717; **Buchanan**, 8 A. 565, 70 S. E. 28.

Whether street-car conductor was, under facts, was question of law. *Toole*, 104/776, 31 S. E. 25.

See catchwords "Exemption," "Wages." Laws construed as a whole. *Morrison*, 126/114, 54 S. E. 938.

Legatee's interest not subjected by garnishment in city court, where equitable accounting necessary. *Commercial Bank*, 147/386, 94 S. E. 303.

Levying officer as garnishee. *Barkley*, 3 A. 101, 59 S. E. 440.

Liability of garnishee, general rule as to condition of; and exception. *Jaques & Tinsley Co.*, 131/2, 62 S. E. 82.

As affected by litigation or judgment against initial carrier. *Southern Ry. Co.*, 23 A. 536, 99 S. E. 41.

No greater than if defendant's debt were being enforced against him. *Neely Co.*, 7 A. 392, 66 S. E. 1099.

Lien of (under act of 1901), does not attach to payments made before summons served, for services to be performed. *Odum*, 118/792, 45 S. E. 619.

Not so acquired by garnishment as to give creditor priority over the other creditors. *Patterson*, 133/701, 66 S. E. 911.

Inchoate, on service of summons. *Citizens Bank*, 16 A. 33, 84 S. E. 482; *Light*, 17 A. 491, 87 S. E. 763.

Service of summons places funds caught in court. They are not taken by petition in bankruptcy filed more than four months thereafter. *National Surety Co.*, 2 A. 666, 58 S. E. 1131.

Of garnishee, when superior to that of plaintiff, as to funds coming in after service of summons. *First National Bank*, 17 A. 442, 87 S. E. 679; *Mutual Ins. Co.*, 2 A. 537, 59 S. E. 469.

Liquidated demand, fund held by last of connecting carriers was not subject as. *Southern Railway Co.*, 148/852, 98 S. E. 541.

Lis pendens, doctrine of, not applied to negotiable instrument before maturity in garnishment case. *Wilson*, 9 A. 587, 71 S. E. 946.

Loss of employment probable because of, no reason for restraining by injunction. *Raines*, 138/791, 76 S. E. 51.

Malicious prosecution by suing out, in violation of statute of other State. *Cummings*, 116/457, 42 S. E. 732.

Petition alleging, demurrable here. *Duckworth*, 114/969, 41 S. E. 62.

Mistake of clerk of court, no excuse for failure to make defense. *Warlick*, 120/1070, 48 S. E. 402.

Mortgagee not entitled to claim fund. *Commercial City Bank*, 18 A. 608, 90 S. E. 173.

Municipal authorities not subject to, for debt arising by exercise of governmental function. *Green*, 135/388, 69 S. E. 544. Municipal officer's wages not subject to. *Tabb*, 120/100, 47 S. E. 587, 102 Am. St. R. 78.

Name of garnishee, error in, waived by failure to raise question at proper time. *Smith*, 20 A. 487, 93 S. E. 105. Omission of "Company" from, not material, when. *Albany Ry. Co.*, 8 A. 174, 68 S. E. 868.

Of party, summons naming "E. B. Johnson," to whom garnishee was indebted, made it necessary for garnishee to answer as to amount due him, though garnishee knew him only as "Ed Johnson," *Central Ry. Co.*, 19 A. 483, 91 S. E. 1004.

Negotiable instrument, as affecting garnishment against maker. *Wilson*, 9 A. 584, 587, 71 S. E. 946. Garnishment of maker of, after transfer; question as to bona fides of transfer; maker could protect himself by vouching transferee into court, to assert title. *Sasser*, 9 A. 177, 70 S. E. 980.

Non-resident, debt due to, by resident, subject to garnishment on execution for special tax; though debt payable at residence of garnishee's creditor. *Baxter*, 131/120, 62 S. E. 42, 20 L. R. A. (N. S.) 268. Non-resident carrier's freight-car not subject to, as against contract right to unload, reload, and return. *Southern Grain Co.*, 127/626, 56 S. E. 742, 9 L. R. A. (N. S.) 853, 119 Am. St. R. 356, 9 Ann. Cas. 437.

Proceeding against non-resident by attachment and garnishment in this State, not affected by appointment of receiver for the defendant by U. S.

court in another State. *S. A. L. Ry.* 17 A. 1, 86 S. E. 270.

Situs of debts to, for purposes of attachment, etc.; act of 1904 fixing it in this State, constitutional. *Harvey*, 128/147, 57 S. E. 104, 9 L. R. A. (N. S.) 965, 119 Am. St. R. 373.

When no jurisdiction of attachment against, levied by garnishment. *Glower*, 120/983, 48 S. E. 355.

Notice by garnishee to non-resident defendant, as to pendency of, whether necessary, to make judgment a bar to action by defendant against garnishee. *Harvey*, 128/153, 57 S. E. 104, 9 L. R. A. (N. S.) 965, 119 Am. St. R. 373.

To defendant, by garnishee. *Southern Ry Co.*, 125/105, 54 S. E. 68, 5 Ann. Cas. 168.

Of traverse, not served by exhibiting and reading it to the garnishee. *Vaughan*, 14 A. 9, 79 S. E. 1130.

Of traverse to answer, not given in due time, refusal to postpone trial in order to allow further time for notice. *Sims*, 123/98, 50 S. E. 960.

Officer of corporation, holding its funds as such, is not subject to garnishment for its debt; aliter where he holds its funds as an individual and is garnished as such. *Macon Navig. Co.*, 111/881, 36 S. E. 965.

Partner may dissolve, in name of partnership. His property and that of partnership bound by judgment; not so as to non-resident partner not served, who did not appear. *Taylor*, 3 A. 106, 59 S. E. 328.

Interest of, how reached. *Medlin*, 13 A. 263, 79 S. E. 82.

Party, debtor presumed to have been, to proceeding in court below, where he took the case to the Supreme Court, the contrary not appearing. *Lampkin*, 115/989, 42 S. E. 369.

Defendant in main case not, to undissolved garnishment; garnishee can not except to judgment against defendant; joint motion for new trial a nullity. *Jones*, 19 A. 216, 91 S. E. 445.

Discharged garnishee is not. *Hirsch*, 130/556, 61 S. E. 225.

Debtor not a party to garnishment. *Taft*, 104/591, 30 S. E. 803.

Defendant in fi. fa. not such a party as could interpose affidavit of illegality, or appeal. *Flynn*, 18 A. 625, 90 S. E. 83. Where no levy on his property and no bond by him to dissolve. *Jackson*, 17 A. 461, 87 S. E. 691.

To garnishee's petition for certiorari; defendant not proper party; joinder of defendant treated as surplusage. *Mitchell*, 7 A. 824, 68 S. E. 343.

To issue on traverse, defendant in fi. fa. is not, unless he has dissolved. *Leake*, 112/919, 38 S. E. 343.

To proceeding, defendant in original action is not, generally; though he may assert certain rights. *Crawley*, 132/99, 63 S. E. 819; *Warthen*, 132/116, 63 S. E. 832, 131 Am. St. R. 184.

Payment by direction of justice of peace, when not relieve garnishee. *Citizens Bank*, 16 A. 33, 84 S. E. 482.

When garnishee not allowed to attack judgment by setting up. *Moultrie Packing Co.*, 23 A. 44, 97 S. E. 552.

Of judgment against garnishee pending application for exemption subjected him to recovery by applicant. *Taylor*, 104/169, 30 S. E. 675.

By garnishee to defendant after service of summons, effect of, where defendant was indebted to garnishee. *Smith*, 15 A. 192, 82 S. E. 761. Right of garnishee to pay himself before collecting for others. *Mutual Ins. Co.*, 2 A. 537, 59 S. E. 469; *First National Bank*, 17 A. 442, 87 S. E. 679.

Photographer not "laborer;" not exempt from. *Mathewson*, 15 A. 706, 84 S. E. 174.

Pleading, right of claimant to file, alleging settlement of judgment on which garnishment issued. *Hirsch*, 130/555, 61 S. E. 225.

Sufficiency of, to authorize award of fund. *Gunn*, 103/609, 30 S. E. 541.

Position of garnishee no worse than if defendant's debt were being enforced against him. *Parker-Fain Co.*, 1 A. 630, 57 S. E. 1074. Not superior to that of debtor. *Butler*, 101/102, 28 S. E. 615.

Presumption as to performance of officer's duty. *Central Ry Co.*, 15 A. 293, 299, 82 S. E. 942.

Priorities of judgment and mortgage execution determinable on trial of garnishment and traverse. *Barkley*, 3 A. 101, 59 S. E. 440.

Profits prospective, no basis for garnishment. *McKay*, 20 A. 403, 93 S. E. 36.

Receiver of railroad, appointed by U. S. Court; jurisdiction of State court as to fund in hands of, in garnishment case. *Lamb*, 19 A. 27, 90 S. E. 736.

Record in attachment proceeding, how far treated as part of record in garnishment proceeding based thereon. *Leffler*, 121/44, 48 S. E. 710.

In garnishment, papers constituting. *Penn*, 6 A. 635, 65 S. E. 686; *Leffler*, 126/662, 55 S. E. 927.

Of main case is no part of the record in the garnishment case. *Warlick*, 120/1072, 48 S. E. 402; *Holbrook*, 114/1, 4, 39 S. E. 937, 938.

Remedy by, available, petition for extraordinary equitable relief not maintained. *Branan*, 122/225, 50 S. E. 45.

Statutory, and not extended to cases not provided for. *Davis*, 111/452, 36 S. E. 803; *Weston*, 10 A. 261, 73 S. E. 404.

Of creditor of husband who is wife's creditor for services performed. *Dollar*, 124/522, 52 S. E. 615.

When not so full and complete as proceeding in equity. *Jaques & Tinsley Co.*, 131/3, 62 S. E. 82.

Not restricted to cases where debtor has no property subject to levy in Georgia. *Cummings*, 116/457, 42 S. E. 732.

Of garnishee compelled to pay debt twice, in consequence of invalidity of judgment on which judgment against himself was based. *Central Ry. Co.*, 5 A. 516, 63 S. E. 639.

Return of garnishment, Civil Code, § 4754, as to garnishee in different district from that of original suit, construed; return could be made to court of justice of the peace, though original suit was in court of notary public.

Western Union Tel. Co., 11 A. 490, 75 S. E. 842.

Of officer, when and how should be traversed. *Atlanta Journal*, 111/720, 36 S. E. 929.

Of service implies direction to garnishee to answer in court where proceeding pending. *O'Neill*, 110/656, 36 S. E. 66.

Of garnishment to court with jurisdiction of subject-matter, in what county. *Hirsch*, 130/555, 61 S. E. 225.

Rights of defendant acquired by garnishor, to subject demands for which defendant could maintain debt or indebitatus assumpsit. *Jaques & Tinsley Co.*, 131/6, 62 S. E. 82.

Salary or wages, when exempt from. *Couch*, 126/62, 54 S. E. 813.

Sale of stock of goods in bulk to garnishee by debtor, validity of. *South Georgia Grocery Co.*, 12 A. 213, 77 S. E. 6.

Second summons on original affidavit and bond, after trial of main action, pending in Supreme Court, not authorized. *Paton*, 114/626, 40 S. E. 760.

Service by leaving summons at abode, bad. *Dooly*, 101/797, 29 S. E. 118.

Entry of, on H., "agent in charge of the office of" defendant company, does not show service on the corporation. Proper form suggested. *Burnett*, 117/521, 43 S. E. 854, 97. Am. St. R. 175.

Burden of proof on issue as to, not carried. *Johnson*, 14 A. 380, 80 S. E. 909.

How made; differs from service of ordinary action. *Phillips*, 132/421, 64 S. E. 456.

On foreign corporation, by personal service on any agent in this State. *Harvey*, 2 A. 569, 60 S. E. 11; *Bell*, 2 A. 813, 59 S. E. 102.

Amendment of entry of. *Southern Express Co.*, 4 A. 399, 61 S. E. 857.

On agent, validity of. *Central Ry. Co.*, 15 A. 293, 82 S. E. 942.

On ticket-agent in charge of office at union station bound railroad, though freight-agent was in charge of its busi-

- ness there. *Seaboard Air-Line Ry.*, 144/322, 87 S. E. 6.
- Written acknowledgment of, sufficient. *Cranford*, 1 A. 319, 57 S. E. 1057.
- Set off all indebtedness of defendant, right of garnishee to. *Mutual Ins. Co.*, 2 A. 537, 59 S. E. 469.
- Unmatured debt owed by non-resident, garnishee can. Question of indebtedness, how ascertained. *Holmes*, 1 A. 339, 58 S. E. 281.
- Sheriff answering, admitting possession of money generally, was cut off from defense against money rule brought by mortgagee whose lien raised the money. *Gravitt*, 141/674, 81 S. E. 1107.
- Situs of debt. *High*, 119/649, 46 S. E. 859; *Nashville Produce Co.*, 121/279, 48 S. E. 945; *Harvey*, 2 A. 569, 60 S. E. 11; *Baxter*, 131/122, 62 S. E. 42, 20 L. R. A. (N. S.) 268. At residence of garnishee. *Hirsch*, 130/555, 61 S. E. 225.
- Garnishee's residence in this State, in case of attachment against non-resident of the State. *Baker*, 20 A. 800, 97 S. E. 496.
- Must be within jurisdiction, to render judgment binding. General rule, that situs is where creditor is domiciled. *Central R. Co.*, 109/354, 34 S. E. 597, 77 Am. St. R. 382.
- Was at residence of garnishee (county in which railroad was served with summons), where garnishment issued on attachment against non-resident of the State. *S. A. L. Ry.*, 17 A. 1, 86 S. E. 270.
- Special fund to be advanced under contract not subject to, where debtor could not compel payment. *Holmes*, 1 A. 338, 58 S. E. 281.
- "Suit," as basis of, defined; not include proceeding in rem. *Weston*, 10 A. 261, 73 S. E. 404.
- Garnishment is. *Woods*, 17 A. 422, 87 S. E. 688.
- Summons ineffectual, where no jurisdiction acquired before return term in attachment case. *Albright Co.*, 126/502, 55 S. E. 251, 115 Am. St. R. 108.
- Tax execution can not be basis of, in favor of transferee. *Davis*, 111/451, 36 S. E. 803.
- Termination of. *Woods*, 17 A. 422, 87 S. E. 688.
- Time for answering, in justice's court; judgment at first term where no answer, when proper. *Jarrell*, 105/139, 31 S. E. 149; *National Bank*, 4 A. 46, 61 S. E. 841. Limit of court's discretion as to. *Central Ry. Co.*, 15 A. 294, 82 S. E. 942.
- Title is the only issue made by claim interposed; claim can not be supported by mortgage. *Commercial City Bank*, 18 A. 608, 90 S. E. 173. Estoppel to deny title to fund. *Harris*, 18 A. 459, 89 S. E. 534.
- Tort liability not subject to, until liquidated by judgment or otherwise. *Lee*, 2 A. 337, 58 S. E. 520. Tort-feasor not subject to, on conversion, until final judgment for damages. *Southern Railway Co.*, 148/851, 98 S. E. 541.
- Subject to, where liquidated by judgment. *A. & W. P. R. Co.*, 6 A. 405, 65 S. E. 165.
- Transfer of promissory note, as affecting. *Sasser*, 9 A. 177, 70 S. E. 980.
- Traverse by claimant, garnishee has no right to object to; and when not entitled to notice of its filing. *Hirsch*, 130/555, 61 S. E. 225.
- Issue on trial of, is indebtedness or not. Not pertinent to inquire as to prior judgment against defendant in the main action. *Whaley*, 139/16, 76 S. E. 390.
- May be filed at any time before garnishee is legally discharged. *Whaley*, 139/16, 76 S. E. 390.
- Of affidavit for garnishment, not authorized. *Cohen*, 1 A. 38, 57 S. E. 974.
- Merely denying truth of answer, sufficient; but it may be amplified. *Barkley*, 3 A. 101, 59 S. E. 440.
- Dismissed for want of due notice. *Sims*, 123/98, 50 S. E. 960.
- Verdict sustaining, not supported by evidence here. *Abbott*, 115/651, 42 S. E. 67.

Traverse—(Continued).

Issue of fact by, that garnishee was indebted to wife of the debtor, and not to him. Verdict authorized by evidence. *Russell*, 120/38, 47 S. E. 528.

When necessary, for claimant to succeed. *Davis*, 108/93, 33 S. E. 815.

How served. *Vaughan*, 14 A. 9, 79 S. E. 1130.

Of return of service, by answer to motion for judgment by default, setting up that summons directed answer to other court. *O'Neill*, 110/656, 36 S. E. 66.

Trial and final judgment, case against garnishee not ripe for, until after valid and enforceable judgment against main defendant. *Nashville Ry. Co.*, 3 A. 561, 60 S. E. 319.

Of issue formed by traverse of answer may be ahead of main case; better practice to postpone. *Whaley*, 139/16, 76 S. E. 390.

Term of, as to equitable petition in aid of. *Gunn*, 103/609, 30 S. E. 541. Unliquidated demand ex contractu, when subject to. *Jaques & Tinsley Co.*, 131/6, 62 S. E. 82.

Verdict for plaintiff for amount named is a finding in favor of the traverse. *Whaley*, 139/16, 76 S. E. 390.

Not too uncertain. *Harper*, 7 A. 373, 66 S. E. 990.

Verification of answer, to best of knowledge, information, and belief, not sufficient. *Central Ry. Co.*, 15 A. 294, 300, 82 S. E. 942.

Vested right to fund impounded not acquired by plaintiff until final judgment against garnishee. *Lears*, 3 A. 615, 60 S. E. 343.

Void judgment against claimant, set aside. *Wingo*, 119/486, 46 S. E. 669.

Against garnishee not answering, where name of defendant in attachment affidavit and bond and name in writ were different. *Leffler*, 126/662, 55 S. E. 927.

Wages exempt from, paid into court, duty of officer to pay to defendant. *Taft*, 104/591, 30 S. E. 803.

Exemption of, not applied where compensation was measured by amount

of work done, though payment was made at end of each period of four weeks. *Moore*, 111/863, 36 S. E. 921.

Of amanuensis stenographer and typewriter operator are not subject to. *Empire Investment Co.*, 133/391, 65 S. E. 882.

Of bartender, though he also keep books, not subject to. *Lowenstein*, 114/709, 40 S. E. 726.

Of clerk in store, when exempt from. *Pike*, 115/688, 42 S. E. 58.

Of laborer exempt from. *Traders Investment Co.*, 3 A. 129, 59 S. E. 454. *Walker*, 3 A. 283, 59 S. E. 850.

Of locomotive engineer exempt from. *Lears*, 3 A. 617, 60 S. E. 343; *King*, 136/212, 71 S. E. 131. Though paid monthly and according to mileage. *Johnson*, 120/1002, 48 S. E. 383. Earned in other State, when subject to. *Harvey*, 2 A. 569, 60 S. E. 11.

Of non-resident, earned without this State, not subject to. *Lears*, 3 A. 614, 60 S. E. 343.

Of street-car conductor, whether exempt from. *Toole*, 104/776, 31 S. E. 25. Exempt from. *Stuart*, 112/818, 38 S. E. 41, 81 Am. St. R. 81.

Of watchman subject to, though he be clothed with power to arrest and subject to municipal police control. *Tabb*, 120/97, 47 S. E. 587, 102 Am. St. R. 78.

Waiver of exemption of wages from, not enforceable. *Traders Investment Co.*, 3 A. 125, 59 S. E. 454; *Walker*, 3 A. 283, 59 S. E. 850.

Of irregularities, by garnishee appearing, etc. *Citizens National Bank*, 16 A. 533, 86 S. E. 403.

Of objection to service, by garnishee answering to merits, and by claimant giving bond to dissolve. *Cranford*, 1 A. 319, 57 S. E. 1057.

Writ of error single, against separate garnishees, not maintainable. *Cutter*, 147/754, 95 S. E. 285.

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Authority as to regulation of railroads and others, touching contracts, rates, etc. *Railroad Com.*, 140/817, 828, 80 S. E. 327, L. R. A. 1915E, 902, Ann. Cas. 1915A, 1018.

Constitutional amendment, proposal and ratification of. *Hammond*, 136/313, 314, 71 S. E. 479, 38 L. R. A. (N. S.) 77.

Eminent domain, power to authorize exercise of, by municipal corporation. *Potts*, 137/212, 73 S. E. 397.

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Journals, functions of. Omission of entries on, held not effective to invalidate act duly enrolled, signed, and approved. *DeLoach*, 134/740, 68 S. E. 708, 20 Ann. Cas. 342; *Whitley*, 134/759, 68 S. E. 716.

Not required to be published before constitutional amendment submitted for ratification. *Hammond*, 136/314, 71 S. E. 479, 38 L. R. A. (N. S.) 77.

Not required to set out substance of prior acts; giving captions and years when passed suffices. *Hammond*, 136/314, 71 S. E. 479, 38 L. R. A. (N. S.) 77.

Officer appointed or elected, power to remove. *Gray*, 134/225, 67 S. E. 859.

GENERAL ISSUE. See Pleading.

No longer a good plea. *Cowart*, 104/520, 30 S. E. 743.

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GEORGIA RAILROAD. See Railroads. Incorporation of original company by act of 1833. Power to acquire lands, etc. *L. & N. R. Co.*, 139/541, 77 S. E. 801.

GIFT ENTERPRISE. See Contracts; Criminal Law; Words and Phrases.

GIFTS. See Debtor and Creditor; Dedication; Deeds; Equity; Evidence; Fraud; Husband and Wife; Insurance; Liquors; Parent and Child; Presumptions; Title; Wills.

Acceptance essential to gift. *Culpepper*, 18 A. 182, 89 S. E. 161; *Lanier*, 18 A. 185, 89 S. E. 182.

Presumption of. *Jackson*, 128/330, 381, 57 S. E. 750.

Administrator's right to recover from donee of decedent, to pay debts. *Wade*, 23 A. 682, 99 S. E. 160.

Advancement, deed by father to sons, for love, etc., presumed to be. *Howard*, 101/224, 28 S. E. 648.

Property conveyed by deed intended as, so treated though grantee did not know. *Ireland*, 133/851, 67 S. E. 195, 26 L. R. A. (N. S.) 1050, 18 Ann. Cas. 544.

Assent by wife to husband's name being inserted with hers in deed, as joint grantees, as constituting, is question of fact. *Roberts*, 112/146, 37 S. E. 179.

Burden of proof on defendant setting up. *Bryan*, 134/48, 67 S. E. 399.

Causa mortis and inter vivos, validity of. *Nation*, 3 A. 85, 59 S. E. 330; *Philpot*, 3 A. 742, 746, 60 S. E. 480. **Causa mortis, or inter vivos; language of donor construed.** *Burt*, 112/466, 37 S. E. 726.

Facts here did not constitute; cases discussed. *Harrell*, 119/458, 46 S. E. 623.

Essentials of. *Cowdery*, 16 A. 387, 85 S. E. 617; *Bank of Adel*, 18 A. 418, 89 S. E. 492.

Certificate of deposit in bank, evidence sufficient as to gift of, by decedent. *Culpepper*, 18 A. 182, 89 S. E. 161. **Entry on certificate not sufficient to show gift.** *Bank of Adel*, 18 A. 418, 89 S. E. 492.

Child, acceptance for, of gift. Jackson, 128/321, 330, 57 S. E. 750; Ellis, 101/7, 29 S. E. 268.

Consideration, gift not founded on. Watkins, 118/374, 45 S. E. 262.

Debtor insolvent, gift by, not shown. Nation, 3 A. 88, 59 S. E. 330.

Declarations of alleged donor, admissibility and effect of, as evidence. Culpepper, 18 A. 183, 89 S. E. 161.

Not admissible to prove gift of land to declarant in possession. Rucker, 136/830, 72 S. E. 241.

Deed in consideration of promise to do illegal or immoral thing is not. Watkins, 118/374, 45 S. E. 262.

Of gift by testator, not superior as title to that of purchaser at executor's sale under power in will, without notice of it. Culbreath, 129/280, 58 S. E. 832.

To wife of vendee by vendor; gift presumed; presumption rebuttable. Jackson, 129/716, 59 S. E. 776.

Delivery, or some act accepted as such, essential to. Burt, 112/465, 37 S. E. 726; Harrell, 119/458, 46 S. E. 623.

Essential to; how shown. Culpepper, 18 A. 182, 89 S. E. 161; Bank of Adel, 18 A. 418, 89 S. E. 492. Not shown by evidence here. Cowdrey, 16 A. 387, 85 S. E. 617.

Not actual, but facts sustained verdict against subsequent donee under defective gift. McMullen, 120/658, 48 S. E. 115.

Not actual, gift incomplete, and revocable. Smith, 114/691, 40 S. E. 757, 88 Am. St. R. 53.

Some formalities may be dispensed with, as between parent and minor children; but some act must complete. Promise or intent to make, unavailing. Donaldson, 122/318, 50 S. E. 94.

To third person for donee, in last sickness of donor, what necessary to effectuate donatio causa mortis. Sorrells, 110/518, 36 S. E. 74.

Constructive. Cowdrey, 16 A. 387, 85 S. E. 617; Lanier, 18 A. 185, 89 S. E. 182. See Culpepper, 18 A. 182, 89 S. E. 161.

To third person, when sufficient; cases collected and discussed. Jackson, 128/321, 57 S. E. 750.

What sufficient as. Hall, 125/801, 54 S. E. 751; Harrell, 119/459, 46 S. E. 623.

Deposit certificate, valid gift by delivery of, not affected by later delivery of check for amount of it. This operated as equitable assignment of the fund. Philpot, 3 A. 742, 60 S. E. 480.

In savings bank; gift by delivery of pass-book, without written transfer. Wade, 23 A. 677, 99 S. E. 160.

In bank, gift of. Culpepper, 18 A. 182, 89 S. E. 161; Bank of Adel, 18 A. 418, 89 S. E. 492.

Essentials of gift. Bank of Adel, 18 A. 418, 89 S. E. 492; Culpepper, 18 A. 182, 89 S. E. 161; Lanier, 18 A. 185, 89 S. E. 182.

All shown by evidence. Nation, 3 A. 85, 59 S. E. 330; Philpot, 3 A. 742, 60 S. E. 480.

Estoppel not raised against assertion of title, from silence on seeing gift made to third person. Hartz, 144/98, 86 S. E. 220.

Not raised against claim of gift from decedent. Wade, 23 A. 677, 99 S. E. 160.

Evidence did not authorize submission of issue as to parol gift with improvements on faith of it. King, 144/318, 87 S. E. 22.

Irrelevant to issue of gift: marriage (undivorced) of witness to alleged donor. Hudson, 147/547, 94 S. E. 1007.

Insufficient to prove gift in parol; no boundaries given, etc. Hall, 136/537, 71 S. E. 901.

Of consent by donee to her husband's purchase of part of land from donor, effect of. Holloway, 140/380, 78 S. E. 928.

Of declarations and conduct of donor, what admissible. Holloway, 140/380, 78 S. E. 928.

Of parent's gift to child, sufficient. Butts, 14 A. 630, 82 S. E. 52. Parent not competent as witness to deny gift in suit against himself by child's administrator, when. *Ib.*

- Of third person denying that decedent had ever given property in dispute to her son, materiality of. *Meriwether*, 18 A. 773, 90 S. E. 731.
- Sufficient to submit issue of transfer of open account as a gift. *Yates*, 148/246, 96 S. E. 427.
- Facts not showing transfer of dominion.** *Bryan*, 134/48, 67 S. E. 399.
- Fraud or mental capacity of donor, burden of proof on party who attacks gift for.** *Philpot*, 3 A. 742, 60 S. E. 480.
- Presumption of, in favor in subsequent purchaser, how rebutted. *Smith*, 2 A. 144, 58 S. E. 303.
- Fraudulent and malicious interference changing intent of donor, liability in damages for.** *Mitchell*, 143/827, 835, 85 S. E. 1050, Ann. Cas. 1917A, 469.
- As to creditors, no legal presumption that gift by insolvent debtor to wife was. *Varn*, 137/300, 73 S. E. 507.
- Gold coin, recovery of, against defense claiming gift.** *Bryan*, 134/48, 67 S. E. 399.
- Husband and wife, transaction between, was a sale, though called a gift in the conveyance.** *Gordon*, 141/24, 80 S. E. 276.
- Taking by, of conveyance of title to wife amounted to. Not avoided on her casting him off. *Jackson*, 146/675, 92 S. E. 65.
- Improvements by donor's executor, with donee's consent, land held subject to executor's claim for, where he was sued for specific performance of parol gift.** *Walker*, 112/733, 45 S. E. 387.
- Made by donee after donor's death, evidence as to, relevant, when. *Walker*, 117/734, 45 S. E. 387.
- Made for donee by another, on faith of parol gift, pending donee's possession, stand on same footing as if made by the donee. *Walker*, 117/734, 45 S. E. 387.
- On land by donor's executor before suit for specific performance of parol gift of the land, executor's claim for, when a charge against the property. *Neil*, 121/647, 49 S. E. 773.
- On land, on faith of parol gift, must be during lifetime of donor, to give equitable title *Kemp*, 144/717, 87 S. E. 1030.
- Incomplete**, where maker of note, when about to die, directed payee to look in a certain place for it, take it, and keep it; but it was not found before death. *Harrell*, 119/460, 46 S. E. 623.
- Incumbered property given unconditionally**, donee took free from incumbrance, as between self and donor. *Walker*, 117/734, 45 S. E. 387.
- Indefinite and uncertain**, incomplete and revocable. *Smith*, 114/691, 40 S. E. 757, 88 Am. St. R. 53.
- Infant donees, delivery of deed in behalf of.** *Kelly*, 135/507, 69 S. E. 724.
- Acceptance of gift for, by parent. *Smith*, 114/691, 40 S. E. 757, 88 Am. St. R. 53.
- Insolvent debtor, avoidance of gift by, as to what creditors.** *Lane*, 140/415, 78 S. E. 1082.
- Instructions to jury not erroneous.** *Bryan*, 134/48, 67 S. E. 399.
- Intention to make, or to accept, material circumstances in ascertaining.** *Gould*, 120/50, 47 S. E. 505.
- To make out papers conveying land, expression of, no contract. *Phillips*, 135/502, 69 S. E. 705.
- Strength of evidence required to prove. *Frank*, 148/858, 98 S. E. 497.
- Judgment lien attaching before completion of, precedes.** *Donaldson*, 122/318, 50 S. E. 94.
- Mental capacity to make, illustrated by code sections as to testamentary capacity.** *Hawkins*, 136/551, 71 S. E. 873.
- Money transferred by mother to son for consideration, error to treat as gift.** *Newman*, 134/137, 67 S. E. 662.
- Municipal corporation prohibited from giving money to railroad, directly or indirectly.** *Town of Adel*, 122/535, 50 S. E. 481.
- Note, gift of.** *Brown* 23 A. 569, 99 S. E. 57.
- Notice of purpose to make gift, whether chargeable to one who sold a pair of diamond earrings to a man, under a contract reserving title until payment, which was not recorded.** *Kaplan*, 16 A. 620, 85 S. E. 946.

Parol gift of land by father to daughter, specific performance decreed against donor's executor. *Walker*, 117/733, 45 S. E. 387.

Admissibility of testimony as to. *Demmons*, 123/84, 57 S. E. 108.

Of land, with possession and improvements, as defense to action by grantee of donor. *Dunn*, 145/195, 88 S. E. 931.

Improvements on faith of, must be valuable. Slight or temporary ones do not suffice. *Holland*, 112/346, 37 S. E. 380.

Irrelevant testimony in suit on, as to making deed. *Thompson*, 118/543, 45 S. E. 439.

Of land, not shown by evidence. *Hammock*, 146/681, 92 S. E. 57; *Coffey*, 146/689, 92 S. E. 57. Evidence of making, to satisfy beyond reasonable doubt. *Adkins*, 147/136, 93 S. E. 92; *Williams*, 147/219, 93 S. E. 215.

Of land; specific performance enforced, where donee took possession and made valuable improvements on the faith of the gift. *Garbutt*, 123/269, 57 S. E. 495, 13 L. R. A. (N. S.) 58. See *Sapp*, 123/752, 58 S. E. 447.

On meritorious consideration, with improvements on faith of it, specific performance of. *Causey*, 106/188, 32 S. E. 138. See *Holmes*, 106/863, 33 S. E. 216.

Supports bona fide claim of ownership and entry. *Ellis*, 101/5, 29 S. E. 268.

Without more, passes no title. *Thaggard*, 112/326, 37 S. E. 367; *Holland*, 112/346, 37 S. E. 380.

With valuable improvement on faith. *Holloway*, 140/380, 78 S. E. 928. Parol arrangement between mother and employer that he should hold her wages for her child, and his depositing them in bank in his name as agent for the child, showed prima facie a completed gift. *Jackson*, 123/321, 57 S. E. 750.

Payment, so-called gift was. *Bryan*, 138/719, 723, 75 S. E. 1117.

Plea setting up, bad in substance. *Harrell*, 119/459, 461, 46 S. E. 623.

Possession of father for son under parol gift of land, recovery on, against adverse holder. *Dasher*, 102/380, 30 S. E. 544.

Partly by tenants, one of whom was donor, who paid rent, sufficient. *Holloway*, 140/380, 78 S. E. 928.

Remaining in donor, not defeat gift, when. *Hall*, 125/801, 54 S. E. 751.

Power of sale by trustee, at request of life-tenant, did not authorize conveyance as gift. *Taylor*, 147/761, 95 S. E. 289.

Presumption of gift. *Thaggard*, 112/327, 37 S. E. 367.

Arises when. *Cowdery*, 16 A. 387, 85 S. E. 617; *Lanier*, 18 A. 185, 89 S. E. 182.

As between parent and child, rebuttable by evidence of resulting trust. *Wilder*, 138/573, 576, 75 S. E. 654.

By husband to wife, of half interest in mortgage, facts raising. How rebutted. *Gould*, 120/50, 47 S. E. 505.

From father, by exclusive possession without paying rent. *Richards*, 106/616, 646, 33 S. E. 193, 45 L. R. A. 712.

From parent, arising from possession of land by child. *Brinkley*, 126/484, 480, 55 S. E. 187.

From parent to child; instructions to jury as to, proper. *Butts*, 14 A. 636, 82 S. E. 52.

From parent to child living apart, on delivery of property into exclusive possession. *Hawkins*, 136/551, 71 S. E. 873.

From seven years possession without rent. *Holloway*, 140/380, 78 S. E. 928.

What necessary to raise, as to dedication of land for street. *Ga. R. Co.*, 118/486, 45 S. E. 256.

Promise of donation to building fund, when enforceable. *Young Men's Christian Association*, 140/292, 78 S. E. 1075, 48 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 136.

Purchaser of land without notice, when protected against decree for specific performance. *Tanner*, 146/338, 91 S. E. 59.

Rent, effect of payment and non-payment of. *Holloway*, 140/380, 78 S. E. 928.

Revocation of, by husband, for wife's infidelity. *Evans*, 118/890, 45 S. E. 612, 98 Am. St. R. 180.

Revocation did not result by omission of donee to present check for payment until after donor's death. *Philpot*, 3 A. 742, 60 S. E. 480.

Specific performance of gift in parol. *Ellis*, 101/7, 29 S. E. 268.

After entry and improvements by donee, and at suit of his heirs. *Hadden*, 118/207, 44 S. E. 1001.

Of parol gift of land, where completed by possession and valuable improvements. *Dunn*, 145/195, 88 S. E. 931. Evidence did not sustain action. *Coffey*, 140/661, 79 S. E. 568.

Statute of frauds, when not applied. *Y. M. C. A.*, 140/291, 78 S. E. 1075, 48 L. R. A. (N. S.) 783, Ann. Cas. 1914D, 186.

Taxes paid by both donee and executor of donor for same period, on the property given, executor not entitled to reimbursement from donee, when. *Walkers*, 133/383, 65 S. E. 885, 24 L. R. A.

Testamentary paper, not executed or probated, no evidence of. *Albany Co.*, 112/450, 37 S. E. 707.

Title by, evidence failed to show. *L. & N. R. Co.*, 134/108, 67 S. E. 652.

Of donee of one who had bought the property under contract of conditional sale, not good, as against the vendor, though the contract was not recorded. *Kaplan*, 16 A. 620, 85 S. E. 946.

Transfer of negotiable instrument without indorsement. *Culpepper*, 18 A. 183, 89 S. E. 161.

Trust not fixed on, because of hope and belief entertained by the donor. *Vickers*, 133/383, 65 S. E. 885, 24 L. R. A. (N. S.) 1043.

Undue influence not shown by evidence. *Philpot*, 3 A. 742, 60 S. E. 480.

Wife's gift to husband, of part of profits of subpartnership; and when no liability on his partner to account to her for money applied to husband's debt. *Morrison*, 122/353, 50 S. E. 175.

Witness, incompetency of grantee of alleged donor as, in suit against donee. Testimony of donee received. *Hudson*, 147/547, 94 S. E. 1007. See *Fairecloth*, 147/788, 95 S. E. 689.

GLASCOCK COUNTY. See *Counties; Liquors.*

GLYNN COUNTY. See *Counties.*

GOOD CHARACTER. See *Criminal Law.*

GOOD FAITH. See *Bills and Notes; Contracts; Criminal Law, catchword "Intent;" Fraud; Husband and Wife; Insurance; Interest; Negligence; Sales; Slander; Title, catchword "Bona fides;" Usury.*

Of arrest under order construed as warrant, affecting liability in damages. *Butler*, 140/579, 79 S. E. 456.

Of executor, not of attorneys, determined as to allowance of counsel fees. *Davison*, 140/707, 79 S. E. 855.

Of possession, evidence to show. *Callaway*, 140/207, 78 S. E. 846.

GOOD WILL. See *Sales.*

GOVERNMENT. See *Constitutional Law; Counties; Drainage of Lands; Municipal Corporations; Powers; State. Of the State.* *State*, 138/835, 76 S. E. 577.

GOVERNOR.

Attorney-general, direction of. Power as to instituting suits. *Walker*, 146/655, 92 S. E. 57.

Constitutional amendment, proclamation declaring ratification of, not conclusive on the courts. Sufficient as to form of publication and submission. *Hammond*, 136/313, 71 S. E. 479, 38 L. R. A. (N. S.) 77.

General Assembly, convocation of, in extra session. Discretion not reviewable. *Bunger*, 146/672, 92 S. E. 72.

Power of, as to commutation of penalty for violation of tax act. *Carmichael*, 102/219, 29 S. E. 211.

- No consent to sale or condemnation of State's property, or interest of its lessee. *W. U. Tel. Co.*, 142/534, 83 S. E. 135.
- Suit by order of, in name of attorney-general, substantially by State; amendment of. *Hart*, 128/754, 771, 58 S. E. 452.
- Suspension of railroad commissioner, power and duty as to. *Gray*, 134/224, 67 S. E. 859.
- GRACE, DAYS OF.** See Bills and Notes; Payment; Usury.
- GRADE.** See Criminal Law; Municipal Corporations.
- GRAMMATICAL CONSTRUCTION.** See Pleading.
- GRAND JURY.** See Bridges; Criminal Law; Juries and Jurors.
- GRANTS.** See Deeds; Evidence; Title. Acts of 1818 and 1819 contemplated survey and grant of entire territory, including unnavigable stream. *State*, 141/153, 80 S. E. 657.
- Cancellation as cloud on title. *Calhoun*, 104/343, 30 S. E. 773.
- Collateral attack of. *Calhoun*, 104/343, 30 S. E. 773.
- Fraudulent, when not set aside on scire facias. *Calhoun*, 104/343, 30 S. E. 773.
- Plat of survey referred to as furnishing description controls as to limits. *State*, 141/153, 80 S. E. 657.
- Scire facias, to cancel petition for, by A, Governor, etc., for use of C, not in name of State. *Atkinson*, 112/485, 37 S. E. 715.
- State no party, not set aside. *Calhoun*, 104/343, 30 S. E. 773.
- GRAVEYARD.** See Cemeteries; Criminal Law.
- GRIFFIN.** See City Courts; Municipal Corporations.
- GROUND RENT.** See *Penick*, 139/649, 653, 77 S. E. 1055, 46 L. R. A. (N. S.) 284.
- GROWING CROPS.** See Crops; Levy and Sale, catchword "Expense."
- GUANO.** See Fertilizers; Nuisances; Taxation, catchword "Business."
- GUARANTY.** See Actions; Banks; Bills and Notes; Bonds; Contracts; Pleading; Principal and Surety; Sales, catchword "Warranty;" Stocks; Warranty; Words and Phrases.
- Acceptance of, how shown; when not necessary to give notice of intention to accept. *Sheffield*, 6 A. 763, 65 S. E. 807; *Sheppard*, 7 A. 760, 68 S. E. 451; *Peck*, 20 A. 429, 93 S. E. 106.
- Action against guarantor before obtaining judgment against original debtor, proper. *Kalmon*, 11 A. 547, 75 S. E. 846; *Fouché*, 18 A. 569, 90 S. E. 102.
- Against guarantor; necessary allegation as to plaintiff's performance of condition precedent. *Williams Valve Co.*, 19 A. 155, 91 S. E. 240. Proper allegations. *Adams*, 19 A. 654, 91 S. E. 1005.
- Construed as based on guaranty, and not on notes. *Kalmon*, 11 A. 547, 75 S. E. 846.
- Jointly against principal debtor and his guarantor, not maintained. *Georgia Casualty Co.*, 23 A. 447, 98 S. E. 414.
- Agreement by A that if credit is extended to B for a limited amount and time, A will pay if B does not, is guaranty, not suretyship. *Sheffield*, 6 A. 762, 65 S. E. 807.
- Ambiguous, construction of. *Peck*, 20 A. 429, 93 S. E. 106.
- Amount of credit extended, larger than sum named, did not relieve guarantor from liability. *Sheppard*, 7 A. 760, 68 S. E. 451; *Sheppard*, 11 A. 514, 75 S. E. 907.
- Of guarantor's liability not diminished by share received by creditor from assets of bankrupt here. *Sheppard*, 11 A. 514, 75 S. E. 907.

Attorney's fees in addition to debt, provision for, in guaranty, enforceable on giving statutory notice. *Sheppard*, 7 A. 760, 68 S. E. 451.

Bank with power to guarantee payment of obligation of another solely for his benefit. Agreement on part of bank to "guarantee" payment of draft, under facts here, was an original and not collateral undertaking and the bank was not liable thereon. *Bank of Omega*, 19 A. 177, 91 S. E. 251.

"Benefit flowing to the guarantor," meaning of, in code-section as to consideration. *Watkins Medical Co.*, 20 A. 691, 694, 695, 93 S. E. 270.

Change or modification of original contract. Rule that it must be in writing. *Sikes*, 11 A. 632, 75 S. E. 988. Guarantor's consent to material modification, not inferred from fact that he knew of it and did not dissent. *Ib.* 632.

Check issued guarantees what. *Lester-Whitney Co.*, 1 A. 244, 58 S. E. 212.

Conditional, distinguished from absolute guaranty. *Williams Valve Co.*, 19 A. 155, 91 S. E. 240.

Consideration for, sufficient allegation as to. *Oslin*, 108/803, 34 S. E. 168.

Of contract, as affecting question whether it was guaranty or suretyship; effect of nominal consideration of \$1. *Watkins Medical Co.*, 20 A. 691, 694, 695, 93 S. E. 270.

Admissibility of parol evidence of. *Georgia Casualty Co.*, 23 A. 447, 98 S. E. 414.

Construction of contract, rule as to. *Peck*, 20 A. 429, 93 S. E. 106.

Description of goods in letter guaranteeing payment; "car of fresh meat" treated as meaning car-load of supplies ordered (consisting chiefly of fresh meat), under facts here. *Armour*, 6 A. 654, 65 S. E. 803.

When strict in favor of guarantor. *Williams Valve Co.*, 19 A. 155, 91 S. E. 240. Against guarantor. *Adams*, guarantor. *Adams*, 19 A. 654, 91 S. E. 1005.

See catchword "Intent," *infra*.

Continuing guaranty of payment for goods

sold, contract construed as. *Adams*, 19 A. 654, 91 S. E. 1005.

Contract construed as obligation to indemnify against liability for defects in articles sold. *Stubbs*, 12 A. 215, 77 S. E. 6.

As a continuing guaranty. *Manry*, 108/14, 33 S. E. 701.

For sale of cotton, guaranteeing agent against loss, liability of principal on. *Dozier*, 138/190, 74 S. E. 1086.

Here was guaranty. *Consolidated Portrait Co.*, 1 A. 809, 57 S. E. 980. Guaranty, not suretyship. *Georgia Casualty Co.*, 23 A. 447, 98 S. E. 414.

Limited amount of guarantor's liability, not amount of credit to be extended. *Carson*, 137/640, 74 S. E. 52, Ann. Cas. 1913A, 1086.

Is stricti juris. *Georgia Casualty Co.*, 23 A. 447, 452, 98 S. E. 414.

Liability of guarantor defined. *Georgia Casualty Co.*, 23 A. 449, 98 S. E. 414.

Of guaranty and of suretyship, distinction. *Manry*, 108/17, 33 S. E. 701; *Campbell*, 108/107, 33 S. E. 871. See catchword "Suretyship," *infra*.

Of guaranty construed against maker. *Small Co.*, 1 A. 83, 57 S. E. 977.

Of guaranty, prima facie; parol evidence admissible to show suretyship in reality. *Paris*, 143/324, 85 S. E. 126.

Of guaranty, shown by letter of credit. *Holmes*, 141/44, 80 S. E. 313.

To "guarantee" payment of indebtedness; when construed to be suretyship, not guaranty. *Watkins Medical Co.*, 20 A. 691, 93 S. E. 270.

Corporation's directors may become its guarantors, and may protect themselves by enforcing the lien; not bound to renew the guaranty, though company solvent. *Rylander*, 108/111, 34 S. E. 348.

Guaranty, when ultra vires. *Houser*, 6 A. 102, 64 S. E. 293.

Credit to be extended not limited by fixing limit of guarantor's liability. *Holmes*, 141/44, 80 S. E. 313.

Discharge of guarantor, by novation. *Little Rock Furniture Co.*, 13 A. 502, 79 S. E. 375.

Discharge—(Continued).

Not result from failure to sue original debtor, though the debtor became insolvent. *Fouché*, 18 A. 569, 90 S. E. 102.

Not result from taking promissory note for the amount due, when. *Kalmon*, 11 A. 547, 75 S. E. 846.

Entry guaranteeing payment of contract and waiving protest, etc., is not an indorsement or transfer of title. *Andrews*, 1 A. 560, 58 S. E. 180.

Exclusion of application to stated part of machinery sold (battery), how construed. *Fountain*, 140/70, 78 S. E. 428.

Insolvency of original debtor, not material. *Fouché*, 18 A. 569, 90 S. E. 102.

Intent of parties governs; construction not strict. *Carson*, 137/641, 74 S. E. 52, Ann. Cas. 1913A, 1086.

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GUARDIAN AND WARD.

§§ 3031 et sq.

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Action on, by administrator of ward, not barred by order on petition of ward, that guardianship be revoked and estate delivered to attorney in fact, conditioned on guardian making full settlement. *Griffin*, 122/102, 49 S. E. 827.

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On interest earned, not allowed to guardian failing to include the interest in his return to the ordinary. *Griffin*, 125/165, 53 S. E. 1004.

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Contract between guardian and ward, after discharge of guardian, when binding. *Ullmer*, 106/815, 32 S. E. 869.

By guardian to pay from ward's estate in his hands, when available, not authorize recovery of without proof as available funds. *Teasley*, 4 A. 243, 61 S. E. 141.

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Of guardian, other than one specially allowed by law, not binding on estate of ward; as, for improving realty. *Burke*, 124/248, 52 S. E. 653.

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Costs of litigation in which minor is represented by guardian, liability for, and how collected; affidavit in forma pauperis. *Platt*, 4 A. 161, 60 S. E. 1068.

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Debts due by decedent as guardian rank prior to judgments obtained in his lifetime. *Doody Co.*, 131/568, 62 S. E. 984.

Deed by guardian as such, and individually, to land owned in common with ward, made to secure loan, lien enforceable against whole property, under judgment here, after ward's death, guardian being sole heir. *Koch*, 111/334, 36 S. E. 695.

By guardian reconveying for purpose of levy and sale, when order of court of ordinary not necessary. *Arro-wood*, 119/623, 46 S. E. 871.

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Descriptive personae; words "as guardian of," not so held, as to grantee in trust deed. *Fleck*, 144/732, 87 S. E. 1055.

Describing grantor or grantee as A, "guardian of" B, effect of. *Board of Education*, 128/162, 57 S. E. 359.

Security deed to A, "guardian of" B, put title in A individually; his reconveyance, describing him in the same manner, put title back whence it

- came. His liability to ward. **Arrow-wood**, 119/623, 46 S. E. 871.
- Devastavit** or mismanagement, discharged surety could not have funds paid into court because of. **Hooks**, 135/396, 69 S. E. 484.
- Division of, as to sureties on two bonds, when erroneous. **Remington**, 137/96, 72 S. E. 918.
- In failing to collect money due ward, and for misuse of ward's funds, liability for. **Byrom**, 102/566, 31 S. E. 560.
- When shown by return. **U. S. Fidelity Co.**, 2 A. 525, 58 S. E. 777.
- Judgment *prima facie* evidence of. Sureties not concluded. **Shipp**, 147/711, 95 S. E. 251.
- Discharge**, appeal lies from order granting, though no issue of fact involved. **Maloy**, 131/579, 62 S. E. 991.
- Decree on application for, declaring appointment void, etc., held erroneous. **Maloy**, 134/432, 68 S. E. 80.
- Of guardian during minority of ward, binding until regularly set aside. **Ullmer**, 106/815, 32 S. E. 869.
- Without four weeks publication of notice of application for dismissal, no bar to action on bond. **Griffin**, 122/102, 49 S. E. 827.
- Dismissal**, appeal from decision on application for, did not carry up record of guardian's appointment. **Maloy**, 134/433, 68 S. E. 80.
- Divorce** decree awarded custody of child to father; mother afterward procured letters of guardianship. Order as to money for child's support, how affected. **Waldron**, 138/788, 76 S. E. 348.
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- Of infant, record of habeas-corpus proceeding admissible on issue as to. **Churchill**, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.
- Duty** of guardian as to disclosure of facts to ward. **Short**, 107/810, 33 S. E. 694.
- Education**, what included in "necessaries" for ward. **Mauldin**, 126/282, 55 S. E. 922, 8 Ann. Cas. 130.
- Election** of ward, to take land in which guardian invested fund, barred by laches after settlement. **Bennett**, 139/25, 76 S. E. 568.
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- Estoppel** as to claim of title, by application for guardianship of property as that of a minor. **Fullbright**, 131/343, 62 S. E. 188.
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- Evidence**, on contest for guardianship, of value and condition of estate, received. **Armour**, 104/579, 30 S. E. 821.
- Expenditure** of corpus for support, without order approving, no protection. **Shipp**, 147/711, 95 S. E. 251.
- Father** is guardian of person of child; ordinary has no power to appoint a different guardian before forfeiture of father's rights; forfeiture must be by legal proceeding, after notice to father. **Jordan**, 5 A. 559, 63 S. E. 595.
- Fiduciary relation**, existence of, not shown by evidence. **Brannan**, 146/528, 91 S. E. 772.
- Financial condition** of applicant for guardianship of person, admissible as evi-

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Fitness of applicant for guardianship of person, opinion of witness as to, incompetent. *Churchill*, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

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Of prospective guardian as to purchase of land did not give ward right of action. *Brannan*, 146/528, 91 S. E. 772.

Good faith or desire to prevent sacrifice of ward's interest in property, not excuse guardian buying it without order authorizing. *Rogers*, 117/821, 45 S. E. 71.

Husband and wife, judgment in proceeding between, to defeat creditors, ward not represented could subject property covered thereby. *Byrom*, 102/566, 31 S. E. 560.

Imbecile or lunatic, suit in behalf of, by voluntary next friend, not lawful. When guardian proper. *Nance*, 112/91, 37 S. E. 125, 81 Am. St. R. 22.

Judgment appointing guardian for, subject to attack in same court for no hearing and no day in court. *Singer*, 135/825, 70 S. E. 662.

Statute as to examination of, is mandatory, and to be strictly construed. *Singer*, 135/825, 70 S. E. 662.

Improvements on property, sale or encumbrance for, not authorized. *Little*, 145/563, 89 S. E. 682.

Incapable person, and minor, appointment of guardian for, governed by same rule. *Armor*, 140/579, 30 S. E. 821.

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Insane person, judgment appointing guardian for, on day when proceeding begun, and without statutory notice void. *Allen*, 120/537, 48 S. E. 176.

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Insurance premiums, effect of using ward's money to pay, on policy payable to ward. *Doody Co.*, 131/568, 62 S. E. 984.

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How chargeable to guardian who does not invest, but mingles ward's funds with his own. *Jones*, 120/588, 48 S. E. 166.

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- Levy on land after death of ward, as individual property of guardian who was sole heir, where judgment was on note signed by guardian as such, and individually. *Koch*, 111/334, 36 S. E. 695.
- Liability of guardian buying stock for his wards at administrator's sale of their father's estate, without an order authorizing the investment. *Rogers*, 117/819, 45 S. E. 71.
- Of guardian who allows one without title to enter upon and use land in which ward owns an interest. *Short*, 107/810, 33 S. E. 694.
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- Of action on bond, twenty years. Not affected by Civil Code, § 3084. *Griffin*, 122/102, 49 S. E. 827.
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- Guardian of, can obtain order for sale and reinvestment. Service of application. *Ocmulgee Lumber Co.*, 136/26, 70 S. E. 346.
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- Misapplication of funds of wards by unauthorized investment, liability of guardian and others receiving. *Howard*, 105/415, 31 S. E. 562, 70 Am. St. R. 44.
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- Note of ward to guardian, when binding. *Ullmer*, 106/815, 32 S. E. 869.
- Signed by one as guardian, treated as his individual undertaking, when. *Teasley*, 4 A. 243, 61 S. E. 141.
- Parental control, presumption as to, where parents in life. *Pruitt*, 102/688, 29 S. E. 437. Parent, though natural guardian, does not legally represent interests of minor heirs. Legal guardian must be appointed. *Park*, 124/1076, 53 S. E. 568.
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By ward by claiming fruits of guardian's unauthorized investment, precludes denial of vendor's right to proceed against property for balance due. **Howard**, 105/415, 31 S. E. 562, 70 Am. St. R. 44.

Receipt in full, by sane ward, not valid if signed before termination of guardianship. **Griffin**, 122/102, 49 S. E. 827.

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Recovery by guardian of minors from trustee, not authorized; trust not being executed. **Parker**, 140/789, 80 S. E. 12.

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By minor, when valid. **Hughes**, 5 A. 330, 63 S. E. 231.

For reinvestment, power of, not involved in case of order at chambers in 1873, for sale of legal estate of minors. **Morehead**, 131/807, 63 S. E. 507.

Of ancestor's estate by administrator, where division in kind among minor heirs could be made, guardian should caveat application for, instead of buying to prevent sacrifice. **Rogers**, 117/819, 45 S. E. 71.

Of land on the premises, not in city, by guardian, under order allowing, invalid; ordinary had no power to authorize. **Horne**, 113/224, 38 S. E. 768.

Of property by administrator for settlement with, what orders for, can not be granted. **Sturtevant**, 133/565, 66 S. E. 890.

Of ward's property must be by order of court or under direction of ordinary. **Hughes**, 5 A. 329, 63 S. E. 231.

Of ward's property not authorized unless made under order of court and at public outcry; purchaser of municipal or State bond from guardian at private sale, with actual or constructive notice, liable to ward. **Dickey**, 16 A. 559, 85 S. E. 766.

Or exchange of ward's land for reinvestment, judge of superior court could not pass order in vacation authorizing, prior to act of 1889. **Mills**, 111/276, 36 S. E. 673, 52 L. R. A. 934.

That one was near enough to hear auctioneer crying, and made no claim or objection, is a conclusion of the pleader. **Furr**, 124/742, 53 S. E. 201.

Private, under power conferred by will, passed no title. **Moore**, 148/77, 95 S. E. 965.

Service acknowledged by attorney for minor, when insufficient. **Wiley**, 129/635, 59 S. E. 709.

On guardian ad litem, sufficient before act of 1876. *Morehead*, 127/510, 56 S. E. 745.

On guardian and on guardian ad litem; none on ward; status of decree. *Taliaferro*, 137/417, 73 S. E. 675.

On minors, when essential; though guardian ad litem for them appointed. *Turner*, 131/444, 62 S. E. 587.

Settlement between guardian and ward, after ward reached majority, when not bind ward. *Short*, 107/810, 33 S. E. 694. When not estop ward. *Horne*, 113/231, 38 S. E. 768.

By guardian with ward's debtor precluded suit by former ward against the debtor, until set aside by direct proceeding, with the guardian a party. *Malpass*, 111/743, 36 S. E. 955.

Denied by ward, evidence conflicting in suit on bond, discretion in refusing new trial not controlled. *Burch*, 118/931, 45 S. E. 698.

With ward before she reached majority, effect of. Duty of diligence after being of age. *Bennett*, 139/25, 28, 76 S. E. 568.

Stock in bank held by guardian, assessment on, without leave of court of ordinary. *Commercial Bank*, 147/636, 95 S. E. 222.

Of minor heirs not preferred to claims of creditors on corporate assets. *Perkins*, 147/527, 94 S. E. 1003.

Suit against minor for tort, though served, not ready for judgment until guardian ad litem appointed. *Maryland Co.*, 124/859, 53 S. E. 395.

Sureties of guardian by estoppel, estopped to deny guardianship. *Griffin*, 125/163, 53 S. E. 1004.

Liability of, on bonds, where one discharged and another substituted. *Hooks*, 135/396, 69 S. E. 484.

Discharged surety could not interfere with guardian continued in office, because of acts of mismanagement, etc. *Hooks*, 135/396, 69 S. E. 484.

Grounds for relieving as sureties are not confined to misconduct of principal in relation to the trust. *National Surety Co.*, 111/307, 36 S.

E. 690. Grounds for surety's discharge from bond of guardian include use of ward's funds, though note and mortgage given for amount used. *Means*, 23 A. 453, 98 S. E. 399.

Testamentary guardian of property, not of person, appointed by will construed. *Churchill*, 132/666, 64 S. E. 691, Ann. Cas. 1913E, 1203.

One to whom parent has released his rights can not appoint. *Lamar*, 117/993, 44 S. E. 866.

Tracing funds wrongfully invested by guardian. *Jordan*, 118/544, 45 S. E. 439.

Transfer of; sufficiency of notice to resident guardian. *Sturtevant*, 133/565, 66 S. E. 890.

Trustees, rule as to (Civil Code, § 4078), applied to guardian, though guardian by estoppel. *Griffin*, 125/163, 53 S. E. 1004.

Tuition, money paid by guardian for, when recoverable by infant. *Mauldin*, 3 A. 800, 60 S. E. 358.

Twelve months exemption from suit against decedent's estate, when not apply in favor of guardian who was sole heir of deceased ward. *Koch*, 111/334, 36 S. E. 695.

Uninvested funds, right to hold, to pay off judgment on which litigation pends, if unmingled or deposited as guardian. *Jones*, 120/588, 48 S. E. 166.

Waste past and future, liability of new sureties for. *Remington*, 137/95, 72 S. E. 918.

Year's support, ward's share in, when not recoverable. *Howard*, 109/259, 34 S. E. 301.

GUNPOWDER.

Common law and statutory regulation of keeping, carrying, etc. *Simpson*, 143/466, 467, 85 S. E. 344, L. R. A. 1915E, 480.

GUYTON. See Municipal Corporations.

